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# SEXUAL OFFENCES AGAINST CHILDREN

Volume 2

Canada







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# Sexual Offences Against Children

## Volume 2

Report of the Committee on Sexual Offences  
Against Children and Youths

appointed by

The Minister of Justice and Attorney General of Canada  
The Minister of National Health and Welfare

Canada





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## Committee on Sexual Offences Against Children and Youths

August, 1984

The Honourable Donald J. Johnston  
P.C., M.P.  
Minister of Justice and  
Attorney General of Canada

The Honourable Monique Bégin  
P.C., M.P.,  
Minister of National Health  
and Welfare

Dear Mr. Johnston and Madame Bégin:

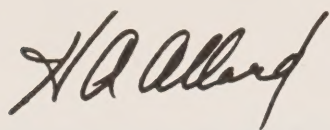
In accordance with the Terms of Reference assigned on February 16, 1981, we have inquired into and report upon the "prevalence in Canada of sexual offences against children and youths" and "the problems of juvenile prostitution and the exploitation of young persons for pornographic purposes".

In undertaking our mandate, we have received valuable assistance and support across Canada from all levels of government, the helping professions and many community and voluntary associations. Our findings show that vital changes must be made in order to afford Canadian children and youths better protection from all forms of child sexual abuse and exploitation.

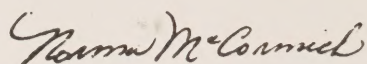
The actions we propose provide a rational and co-ordinated framework whose implementation would assure a level of protection that is essential for young persons to have against sexual offences. In recognition of the child's vulnerabilities and special needs, efforts to provide better assistance and protection for sexually abused children and youths must be assigned high priority by the Government of Canada. These activities must be undertaken on a co-operative basis with the provinces and non-governmental organizations, and must be strongly co-ordinated.



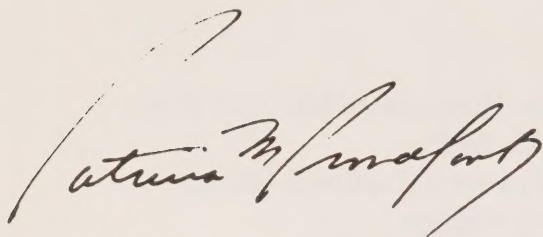
We respectfully submit our recommendations. We do so unanimously.



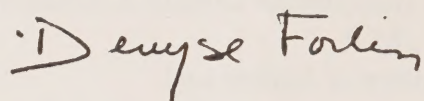
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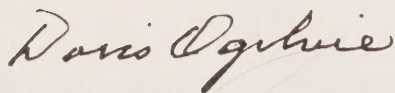
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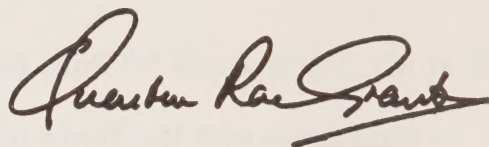
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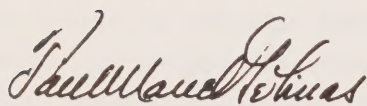
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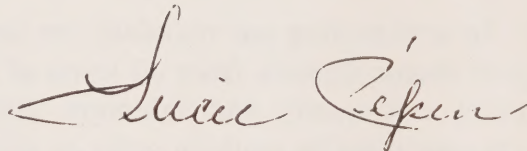
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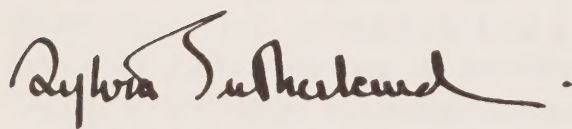
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## Part VI

# Health Services





## Chapter 30

# Research and Treatment Programs

In its Terms of Reference the Committee was asked to consider: “the elements of the offences”; means other than legal ones which are used “to protect children and youths from sexual abuse”; and the measures required to improve the protection afforded victims of these offences. Implicit in the Committee’s mandate was a recognition of the fact that health services have an essential contribution to make in the treatment and protection of sexually abused children, a recognition acknowledged by the joint appointment of the Committee by the Department of Justice and the Department of National Health and Welfare and reflected in the Committee’s interdisciplinary membership.

The information obtained by the Committee on sexually assaulted children who were injured and the medical care they received is presented in the chapters in this section of the Report. In this chapter, an overview is given of the issues identified by the Committee. This summary is followed by a synopsis of the Canadian medical research dealing with these matters and by a description of developments in the establishment and operation of specialized units for the identification and treatment of sexually abused children.

In the chapters that follow in this section, an analysis is given of: the findings of the National Hospital Survey (Chapter 31); the classification, for purposes of hospital and medical care statistics, of the diseases, injuries and conditions which were treated in relation to child sexual abuse (Chapter 32); the health risks associated with child sexual abuse in relation to live births, therapeutic abortions and the contracting of sexually transmitted diseases (Chapter 33); a review of the genetic implications of incest (Chapter 34); and an overview of the practices of criminal injuries compensation boards (Chapter 35).

## Sexual Abuse and Health-related Issues

A central concern of the Committee was the documentation of the nature and extent of the harms associated with the sexual abuse of children. The documentation of these injuries is a prerequisite to considering the nature and



gravity of the long-term harms experienced by these children, whether the medical care provided is adequate or might be improved, whether the harms incurred may constitute sufficient grounds to take custody of a child or serve as the basis for the laying of charges against an assailant by the police, and the nature, collection and preservation of evidence with respect to these injuries.

The classification of the elements of the sexual offences set out in the *Criminal Code* by the 1983 amendments which were proclaimed in January, 1983 underscores the need for having reasonably firm documentation of the nature and extent of injuries associated with sexual assaults. These amendments introduced the provision that made the causing of bodily harm an element of one form of the sexual assault offences; it also specified the wounding, maiming or disfiguring of a person by an assailant as elements of the offence of aggravated sexual assault. To the extent that the elements of these offences occur with respect to sexually assaulted children, their assailants may be charged. Conversely, to the extent that these elements are found not to occur, or in instances in which there is insufficient documentation of evidence, the more serious forms of the sexual assault offence will be inapplicable in the prosecution of these cases.

In its review of *Advisory Reports and Previous Research*, (Chapter 4), the Committee found that there was limited and largely inconclusive documentation concerning the injuries that were known to have resulted from incidents of sexual assault, whether the victims were children or adults. While in some reports dealing with these matters, it was concluded that a majority of sexually assaulted victims had been injured, in some instances seriously, the documentation upon which these observations were based either was fragmentary or was derived from the experience of a small number of victims who had been seen at a hospital clinic or a voluntary community referral agency. The assumption was made in some of these reports that the experiences of sexually assaulted children were similar to those of adult victims.

Little of the general community and social survey research for Canada available on these matters appears to have considered directly the extent and nature of the injuries sustained by sexually assaulted children. For these reasons, these sources cannot be drawn upon as a basis upon which to determine the extent of this problem, to assess the measures taken or those steps that might be effective in improving medical care, or to evaluate the potential utility of the provisions regarding injuries introduced by the 1983 amendments, as these pertain to sexually assaulted children.

In order to obtain documentation about the nature of the physical and emotional harms incurred by children who had been sexually assaulted, the Committee sought this information in each of its national surveys. Following a review of available medical research concerning the issues identified by the Committee, it undertook a separate study in which a number of major regional hospitals participated. These surveys, and in particular the National Hospital Survey, not only assembled extensive findings on injuries associated with sexual assaults, but also served as the basis for a review of the health services provided

for these children, of the extent to which other services were notified of these cases, and of ways in which medical services might be improved to afford better protection.

As the Committee undertook its review of sexually assaulted children who had been injured and of the medical services provided for them, it learned that in some quarters there were mixed reactions about the provision of existing health services. In some instances, sharp criticism was levelled at the medical profession and hospitals for their alleged indifference to these problems and the insensitive care that they provided for patients who had been sexually assaulted. At meetings which the Committee held with some non-medical child care specialists, it was reported: that some hospitals routinely turned away or gave a "brush off" to these patients; that the hospitals did not have adequate facilities; that their personnel were often inexperienced or poorly trained to deal with these problems; and that, of the sexually abused children who had been treated, few of these cases were reported to child protection services and the police. While such allegations were often voiced, they were seldom supported by reasonable evidence to document their validity. While the Committee neither accepts nor rejects these premises, in order to fulfill its Terms of Reference, it deemed it essential to obtain information on these issues, and in particular, on the medical assessment of injuries sustained by patients in incidents of child sexual abuse, and on the procedures taken in providing care for these children.

Counterbalancing the criticism directed at the provision of medical care for sexually assaulted patients, the Committee also learned of the operation of a number of specialized units across Canada which were seeking to provide exemplary and comprehensive care for sexually abused children. Several of these programs had evolved out of special units for physical child abuse established in the late 1960s and early 1970s. These programs were initially set up as a result of the growing recognition of the problem of physical child abuse, of which sexual abuse was known to be a component, but one that in relative terms, had received comparatively little medical attention. The available statistics on cases of child sexual abuse treated at some of these programs during this early period ranged between 7.7 and 13.6 per cent of the caseloads of child physical abuse.

Towards the end of the 1970s, there was a sharp increase in the number of sexually abused children referred for medical assessment and treatment. In several hospitals across Canada, either sub-units specializing in child sexual abuse evolved out of established programs for physical child abuse, or new, autonomous units for this purpose were created. In some instances, these services operated under the aegis of a hospital or a community-based co-ordinating committee having an interdisciplinary membership.

When the Committee undertook its review, apart from a number of in-house reports describing the work of these special hospital units, there was no listing or comprehensive review of the objectives of these programs, of the types



of services routinely provided, and of the experience of sexually abused children who had been assessed and treated. In the 1978 *Child Abuse Study* sponsored by the Department of National Health and Welfare, a description was given of eight hospital-based child abuse and/or protection programs, but no information was provided about the procedures followed with respect to sexually abused children.<sup>1</sup> With the co-operation of a number of major hospitals across the country, the Committee assembled a profile of the services being provided for sexually abused children. A summary of the operation of some of these programs is given later in this chapter.

With respect to its mandate, the Committee identified four additional medical issues warranting special consideration. These concerns were with: the means used to classify sexual assaults and related injuries for purposes of hospital and medical care statistics; the extent to which children who had been sexually assaulted had become pregnant, had had a therapeutic abortion, or contracted a sexually transmitted disease; the genetic implications of incest for offspring of such unions; and the provision of compensation for sexually assaulted young persons.

In relation to the diagnostic identification of sexual assaults of children, the statistical system developed for the classification of diseases, injuries and causes of death that is used widely across Canada adheres to the concept of illness as pertaining to the individual. Thus, it permits the identification of only a limited number of the sexual acts that may be committed against a person (child or adult). This classification system, for instance, identifies the sexual deviation of *exhibitionism*, but not acts between individuals such as incest or sexual assault. The Committee's review of the system of disease classification, given in Chapter 32, was undertaken to assess how the diagnoses of sexually assaulted children were being classified and to determine the effectiveness of this system as a means of identifying these conditions.

The Committee reviewed national statistics in relation to child births and therapeutic abortions involving young girls. The Committee also considered the issue of sexually transmitted diseases that may have been contracted by children as a result of sexual assaults. Because of the stigma associated with venereal disease, it is generally believed that, despite regulations requiring the reporting of these diseases, few of these cases are brought to the attention of notifiable disease control programs. In the research on child sexual abuse, it appears that only a handful of studies has dealt with the associated risk of a child contracting a venereal disease. It is generally believed that few such cases occur.

An alternative approach is to consider cases of sexually transmitted diseases in which children have been treated for this condition, regardless of whether they may have been otherwise sexually assaulted. In this respect, the Committee was fortunate to be able to work in co-operation with a provincial communicable disease control program. Drawing upon its records of notified cases of sexually transmitted disease, the Committee reviewed the experience

of several hundred children who had contracted these conditions. The results of this review are given in Chapter 33.

With respect to the genetic implications of incest, it has been concluded in some quarters that since these risks are believed to be minimal or do not exist, there is no justification on these grounds for the retention of a special provision dealing with this offence in the *Criminal Code*. A number of research studies involving the discipline of genetics have dealt with these issues and a few reports have documented results in relation to children who were born as a result of incest. The Committee undertook a review to clarify this issue, with the findings given in Chapter 34.

In virtually all jurisdictions, an administrative board has been established whose function is to provide compensation to the innocent victims of crime. In recent years, a small but growing proportion of these awards has been made to the victims of sexual assault, including those who were children and youths. The practices of these boards and case studies of young victims are reviewed in Chapter 35, *Criminal Injuries Compensation Boards*.

## Medical Research

In its review of medical research on child sexual abuse in Canada, the Committee identified five types of reports. These studies included:

1. *General Reviews*. These reports provided an overview of the general research literature. Their focus is variously on the etiology, classification and discussion of treatment procedures.
2. *Physical Child Abuse*. Several Canadian clinical research reports have documented the experience of physically abused children, of whom some were sexually abused children.
3. *Child Sexual Abuse*. The mounting of studies on this problem gained momentum during the 1970s; research along these lines had been undertaken at about half a dozen medical centres across Canada. The most extensive longitudinal studies on child sexual abuse for Canada have been carried out at the Centre Hospitalier Saint-Justine in Montreal.
4. *Incest*. The initial reports on incest involved the presentation of case reports on victims and/or offenders. In recent years, the experience of small groups of patients has been documented, most notably, at the Forensic Psychiatry Clinic of McGill University. A majority of the cases of incest reported in clinical research had been referred to psychiatric services by the police or remanded for assessment by the courts.
5. *Pedophilia and Exhibitionism*. Extensive research was undertaken on a small number of pedophiles and exhibitionists with the information on these sexual offenders having been obtained from police records or assessments of these patients made at forensic psychiatric clinics. The most complete reports have come from the Toronto Psychiatric Clinic (more recently retitled, the Metropolitan Toronto Forensic Service [Metfors]).



The findings of the fourth and fifth categories of clinical medical research are considered elsewhere in the Report. In the instance of the clinical results on incest, no information was available on the findings for patients in relation to their physical examinations and their physical injuries. Most of the studies on incest have dealt with the experience of suspected offenders and these reports have not provided a detailed description of the young victims of this offence. This approach also characterizes the research on pedophilia and exhibitionism in which the focus of attention has primarily been on providing an assessment of assailants. The limited information given about victims of these offences in these research studies is typically gleaned from reports about them provided by their suspected offenders.

In the following parts of this chapter, the conclusions and findings of the first three categories of clinical reports are summarized in relation to: the procedures followed in the identification and treatment of sexually abused children; the listing of findings based on the medical histories and physical examination of these patients; and information on the clinical assessment of the injuries which sexually abused children may have suffered in relation to these incidents.

## General Medical Reviews

Canadian medical reports on physical child abuse which began appearing in the 1970s provided an overview of these problems and in a few instances the results of clinical research describing the experience of young children who had been treated. The Canadian reports in the former category acknowledged the work of Henry Kempe of Colorado, whose findings served as a catalyst in initiating the establishment of several comparable programs in this country.

In his research on the *Battered-Child Syndrome*, Kempe gave findings on 302 cases from a national survey of 71 hospitals across the United States. This 1961 survey found that 33 of the children had died and 85 had suffered permanent brain damage. Legal action had been taken in about a third of the cases for which a "proper medical diagnosis" had been given. For a majority of these cases, it was reported that charges had not been laid because there was insufficient evidence; the requisite medical examination procedures had not been performed; the injuries sustained by patients were deemed to be minor; or attending physicians were reluctant to initiate legal action. In commenting on these findings, Kempe noted:

"... physicians have great difficulty both in believing that parents could have attacked their children and in undertaking the essential questioning of parents on this subject. Many physicians find it hard to believe that such an attack could have occurred and they attempt to obliterate such suspicions from their minds, even in the face of obvious circumstantial evidence. The reason for this is not clearly understood. One possibility is that the arousal of the physician's antipathy in response to such situations is so great that it is easier for the physicians to deny the possibility of such an attack than to have to deal with the excessive anger which surges up in him when he realizes the

truth of the situation. Furthermore, the physician's training and personality usually make it quite difficult for him to assume the role of a policeman or district attorney and start questioning patients as if he were investigating a crime."<sup>2</sup>

Drawing heavily on the reports by Kempe, Gil and other researchers who had studied these problems in the United Kingdom and the United States, a number of Canadian general review articles were written during the 1970s by physicians who identified issues and programs related to child abuse. The major themes dealt with in these review papers included:

1. *Physical Child Abuse.* All of these reports focussed on physical child abuse. The sexual abuse of children either was not dealt with or was listed only in passing as a component of physical abuse.
2. *Inadequate Statistical Information.* Most of the reports recognized that there was insufficient information on child abuse for Canada. Bell, for instance, noted in 1973 that "available statistics on child abuse in Canada are unreliable, and the true incidence is difficult to establish."<sup>3</sup> In the absence of reliable information for this country, there was a tendency in these reports to transpose the results of studies done elsewhere as though they were applicable to the Canadian situation.
3. *Need for More Comprehensive Reporting.* Several reports called for the establishment of more effective reporting systems in order to facilitate the more complete identification of child abuse and to serve as a basis for planning more effective treatment programs.
4. *Optional versus Mandatory Reporting of Cases.* The prevailing assumption in the reports was the belief that the ethical physician should exercise his or her discretion as to whether cases should or should not be reported to the authorities. Opinions on this issue were divided. Boone, for instance, recommended in 1970 that "where an accusation of battering has been made, this is a legal problem and must be reported immediately to the police."<sup>4</sup> This perspective was endorsed in 1976 by Segal who observed that "in the best interests of the child, he (the physician) is justified by law to make the report. He is protected by any loss or damage as a reprisal against making such a report, or giving evidence in courts."<sup>5</sup> In contrast, Jacobs noted in 1978 that "my own view is that mandatory reporting on general lines will achieve little, since it will be too difficult and costly to effect".<sup>6</sup>
5. *Patient History Protocols.* Several reports outlined the types of information which should routinely be obtained or considered by the attending physician during an examination of a child who was known or suspected to have been physically abused.
6. *Health Team Approach.* All of the general reviews focussing on the issue of child physical abuse advocated that a team approach be adopted in the management of physically abused children. Typically, the composition of the team envisaged included: paediatricians and/or psychiatrists, nurses, social workers and a number of other health workers. Both Segal and Carter reported that by the mid-1970s, a number of hospital-based child abuse teams had been established across Canada.

Noting the different membership of these teams, Segal observed that “the success of a child abuse team rests not so much on its organization as upon the talents of specific individuals.”<sup>77</sup> Notably absent from the composition of the recommended child abuse teams which were advocated in these reports was participation by: community child protection workers, the police, Crown attorneys or community volunteers. In a number of hospitals across Canada, child abuse teams had already included representatives from these disciplines or agencies. On the omission of other workers in the membership of these hospital teams, Segal noted that “many members of the medical profession have been unaware of the specialized and other community resources available to them and this may have contributed to . . . a tendency to attempt management that could well have been handled by non-medical professionals.”<sup>78</sup>

On the basis of the Committee’s review, it is evident that significant changes had occurred between the date of publication of these reports and the beginning of this decade when facilities for providing special services for sexually abused children began to be established. Unlike the units from which several of these new programs had evolved, the membership of these teams has been broadened to include a number of other disciplines involved in the protection of children. These changes constituted a gradual shifting away from a “medical model” and the gradual adoption of a philosophy of shared interdisciplinary management of these cases.

The general reviews on child abuse in Canada highlight a number of concerns expressed by senior clinicians which as yet have not been resolved. On the basis of the Committee’s review, it is concluded that the classification system for diseases and/or conditions precludes the identification for statistical purposes of many conditions involving child sexual abuse. It is also evident from the Committee’s research findings and discussions with physicians that medical opinion is still strongly divided on the matter of the optional or mandatory reporting of known or suspected cases of sexual abuse to the authorities. In the course of its visits to different hospitals across Canada, the Committee found that on occasion there was little knowledge of the work of comparable programs elsewhere in the nation. There was often a better knowledge of special clinical programs in the United States, United Kingdom or France than of the operation of a number of well established Canadian specialty units.

## Clinical Research Studies

In its search for Canadian clinical research on child sexual abuse, the Committee undertook a review spanning three decades prior to July, 1983 of indexed inventories of medical research. In addition, the Board of the Canadian Paediatric Society approved the publication of a notice in its *Bulletin* that requested reports of studies on these issues and copies of medical protocols being used in the assessment of sexually abused children. The research studies identified by these means paralleled the shifting sequence in the focus of scholarly attention that was noted in the general clinical reviews for the field. Several of the initial studies focussed on physical child abuse. Towards the end of the 1970s, reports of research on child sexual abuse began to appear in



professional journals. Because of their relevance to the issues being considered by the Committee, some of the principal findings of these clinical studies are presented.

### 1957-1971 Winnipeg Child Abuse Study

The experience of 132 children who had been physically abused and who had been treated at the Children's Hospital of Winnipeg between 1957 and 1971 was documented in this report, the first of its kind in Canada.<sup>9</sup> The study documented the physical and emotional injuries of these children, 34 of whom were followed up and medically re-examined. Less than half of the group of patients who were reassessed two years following their initial admission to hospital were considered to have developed normally. The remainder were found to be retarded, emotionally disturbed or showed evidence of having suffered brain damage.

This detailed review of physical child abuse provided no separate listing of the children in this group who may have been sexually abused. One child was reported to have had a torn rectum but the cause of this injury was not identified.

Like Kempe's study undertaken in the United States, this baseline Canadian report outlined steps for the improvement of the clinical management of these cases. The researchers recommended that their care be provided by "experienced medical and social work personnel"; that there was a "necessity of letting the medical facts speak for themselves"; and that there should be "follow-up surveillance of these families."<sup>10</sup>

### 1965-1967 Edmonton Rape Study

Based on referrals from the Edmonton Police Force, 100 sexually assaulted females were medically examined between July, 1965 and January, 1967.<sup>11</sup> Of this number, 38 were girls who were age 15 or younger. The study found that "child molestations are more common in the summer months." The injuries of the patients were not reported separately for children. For all patients, it was reported that five had suffered bruised extremities, four had contusions and 14 had lacerated hymens.

The study did not state how many of the females who had been sexually assaulted had not been physically injured. Based on the findings presented, and assuming that no patient had received multiple injuries, then slightly over three in four females (77 per cent) were reported not to have been physically injured.

## 1966-1970 Nova Scotia Child Abuse Study

The results of this extensive interdisciplinary study of child abuse are cited elsewhere in the Report.<sup>12</sup> Of the 59 cases of child abuse which were identified over a five year period, one involved a child who had been sexually abused. No specific information was given about this child.

## 1972-1976 Toronto Child Sexual Abuse Study

On the basis of the cases of child sexual abuse treated at the Hospital for Sick Children from 1972 to 1976, 50 were selected for an indepth analysis involving 99 variables.<sup>13</sup> The principal findings of this extensive report were:

- *Age and Sex.* Of the 50 children, 42 were girls and eight were boys. The average age of the children was 8.1 years.
- *Number of Assaults and Time Taken to Report.* Of the 23 children who had been assaulted once, the average time taken to report the incident was about half a day while for the 27 children who had been victimized more than once, the average time elapsed was over three months.
- *Identity of Suspect.* About one in four (25.5 per cent) suspects was a family member or a relative, 41.8 per cent were friends or acquaintances and 32.7 per cent were strangers.
- *Consent and Coercion.* About one in four (26 per cent) children was reported to have consented to the assault and the same proportion had actively resisted their assailants.
- *Child's Awareness of Act.* Half of the children (52 per cent) were judged to have known the meaning of what had happened to them, 42 per cent were reported not to have been aware that "something bad" was being done to them, and no information on this point was available for the remainder of the children.
- *Physical Injuries.* Only reported physical injuries to the child were recorded in this study. No information was given about the nature of these harms. Based on the information listed in hospital charts, 48 per cent of the children had been injured, an equal proportion had not been hurt, and no information was given for the remainder of the cases. Of the children who had been assaulted by strangers, one in four (27.8 per cent) had been injured, while of those who knew their assailants, half (51.4 per cent) had been physically hurt in some way.
- *Referrals Between Agencies.* Over half of the patients (54 per cent) were known to have been in contact with child protection services before they had attended the hospital. Following their medical assessment and treatment, 11 patients were referred to a child protection service, 27 were medically referred and 10 children had not been referred to other services.

The report noted: "With respect to the Children's Aid Societies' referrals, again it is astonishing that there were only 11 referrals. It is the policy of the Hospital for Sick Children to "automatically" refer all alleged sexual assault cases to the appropriate Children's Aid Society. The records at the Hospital do not indicate why adherence to this policy is not being maintained".<sup>14</sup>

- *Liaison with Police.* Almost nine in 10 (88 per cent) of the children were brought to the hospital for assessment by the police. No information was given of the proportion of cases in which charges were laid. In 10 instances, the assailants were known to have been prosecuted, and of these, seven were convicted.
- *Laboratory Procedures.* On an average, 2.3 laboratory procedures were ordered on behalf of each patient. The number of these tests varied in relation to whether the suspected offenders were family members (1.7) or strangers (2.3).

## 1976-1979 Ottawa Child Sexual Abuse Study

Sexually abused patients who were referred to the gynaecological outpatient service of the Children's Hospital of Eastern Ontario (Ottawa) were assessed and treated by a team comprised of a gynaecologist, a nurse and a social worker.<sup>15</sup> Over a period of about two and a half years, 31 sexually abused children were seen at this service.

- *Age.* Of the 31 children, 12 were 12 years or younger and 19 were between 13 and 17 years-old. The sex of the children was not reported.
- *Involvement with Helping Services.* Slightly less than half (45 per cent) of the children had had prior contact with child protection and/or psychiatric services.
- *Social Difficulties.* Prior to attending the clinic, there had been an earlier identification of social difficulties for 47 per cent of the children and 75 per cent of the adolescents.
- *Identity of Suspect.* In 84 per cent of the cases, the identity of the suspect was known (family, 36 per cent; neighbours, 32 per cent; and peers, 16 per cent).
- *Use of Force.* Force was reported to have been used against 8 per cent of the children and 37 per cent of the adolescents.
- *Follow-up of Patients.* About half (47 per cent) of the adolescents, but only 8 per cent of the children were followed up by the clinic for a period of a year or longer.
- *Notification of Authorities.* It was reported that "the police were contacted in the majority of the cases" and "court involvement proceeded with 35 per cent of the population." Referrals to child protection services were not reported.

This report on the experience of sexually abused children did not specify their gender, no information was given on the findings of their medical examinations and no findings were reported on the injuries which they may have sustained as a result of having been sexually assaulted.



## 1977-Ongoing, Montreal Child Sexual Abuse Study

The most extensive clinical research on child sexual abuse for Canada has been undertaken at the Centre Hospitalier Sainte-Justine.<sup>16</sup> The initial report on this research which was started in 1977 reviewed the experience of 125 sexually abused children. The scope of the study was subsequently extended to include the documentation of the experience of 407 young patients who had been seen by the end of 1981. A component of this research has been the follow-up of 107 children and their families 13 months after the offence had initially been reported to the Hospital.

In 1977, a protocol was developed for taking medical histories from sexually abused patients. At this Centre Hospitalier, most of these patients were seen on an outpatient basis. The findings of the initial study of the experience of 125 children included:

- *Age and Sex.* Most of these patients were females (119 girls, six boys); 56 of the children were age 11 or younger, and 69 were between 12 and 17 years-old.
- *Sexual Acts.* Of the 56 children, 80.4 per cent had had their genitals touched and 10.7 per cent had been a victim of sexual intercourse, while for the 69 adolescents, the proportions for these acts were 31.9 and 44.9 per cent respectively.
- *Identity of Suspect.* The suspect was not known in relation to 39 per cent of the children and 46 per cent of the adolescents. Of the 64 suspects who could be identified, 36 were age 20 or younger.
- *Time Taken to Obtain Medical Assistance.* About seven in 10 of the patients were seen at the hospital within 48 hours after they had been sexually assaulted.
- *Injuries.* Of the 125 patients, only one was reported to have required surgery, and for 50 patients for whom laboratory tests were obtained, positive spermatozoid results were found for 21, three of whom had contracted a sexually transmitted disease.

The preliminary findings of the follow-up study of 107 patients which were reported to the Committee indicated that about half of the teenagers had discontinued seeing their boyfriends and a number had transferred to other schools.<sup>17</sup> About one in four (26 per cent) was still found to be afraid and about one in three (29 per cent) was highly emotional about a year after the assaults had occurred. Most of the children had sought to resume their usual activities, but in this respect, some of them were thwarted by the reactions of their families. About one in five of the parents of these children was still angry (21 per cent) at what had happened or tended to blame the victim (18 per cent). About a third of the parents (30 per cent) refused to discuss the incidents with their children and they reacted as though nothing had happened to them.

In the context of comparable clinical research on child sexual abuse, the longitudinal study undertaken at the Centre Hospitalier Sainte-Justine is unusual with respect to: its size; the amount of the information obtained; the

length of the review carried out over a period of several years; and the follow-up of patients in order to document the long-term effects of sexual assaults against young victims.

## 1977-1978 Toronto Child Sexual Abuse Study

Drawing on records of the Emergency Department of the Hospital for Sick Children, a total of 843 cases of child sexual abuse was identified for the years 1962, 1967 and 1970-78.<sup>18</sup> An average of about 76.6 cases was reported per annum with the largest number of cases having been seen in 1970 (95), 1971 (97) and 1978 (96). A more detailed review was undertaken of 175 hospital charts for 1977-78, for which sufficient information was obtained for 164 cases. The 1972-76 study of child sexual abuse undertaken in this hospital was not referred to in this review. Consequently, there was no comparison of the results of the two inquiries based in the same hospital.

- *Age and Sex.* Of the sexually abused patients who were seen between 1977-78, 89.4 per cent were girls and 10.6 per cent were boys. The average age of the children was 9.8 years.
- *Identity of Suspects.* In two of three cases, the children knew their assailants (close relatives, 27.6 per cent; friends, acquaintances, 38.5 per cent).
- *Mentally Retarded Victims.* Seven of the children (4.0 per cent) "were diagnosed previously as mentally retarded . . . with a mean age of 14.3 years. All, but one, were girls. The assailant was unknown in three cases, an acquaintance in three other cases and a relative in one case."<sup>19</sup>
- *Physical Injuries.* The 1972-1976 study undertaken in the Hospital for Sick Children reported that 48 per cent of the sexually assaulted children had been physically injured. In contrast, the 1977-78 study at this hospital concluded that "physical injury is involved in a relatively small proportion of alleged sexual assault cases seen by physicians . . . in our study, the incidence was 14 of 174, or 8 per cent."<sup>20</sup> No listing of the nature of these injuries was given.
- *Previous Contact with Hospital.* Of the 114 children who had been sexually assaulted by persons whom they knew, about half (52.6 per cent) had previously been treated at the hospital for unrelated conditions. However, in one in seven of these cases, information in the patient's charts indicated that medical personnel had previously suspected that a child had been sexually abused.
- *Referral to Child Protection Service.* Of the 164 children for whom this information was noted, referrals were made to child protection services in about one in four cases (28.0 per cent). The proportion of such referrals was: incest (57.4 per cent); patients who knew their assailants (17.9 per cent); and children who did not know their assailants (14.0 per cent).
- *Notification of Police.* Of the charts in which this information was noted, the police had been notified in about four in five cases (78.6 per cent). Charges were laid in about a third (36.9 per cent) of the cases in which the assailants were known and in one in nine cases (11.1 per cent) in which strangers had sexually assaulted a child.

## 1980 St. John's Child Abuse Study

The Child Protection Team of the Janeway Child Health Centre (St. John's) was initially established in 1974 to review cases of suspected abuse admitted to the hospital. The work of this team, which was comprised of two physicians, the Director of Ambulatory Services, a social worker and a representative of the provincial Department of Social Services, was subsequently extended to include external referrals. A review was undertaken of 78 child abuse victims seen by the team during six months in 1980.<sup>21</sup>

"The team dealt with six cases of sexual abuse—four were girls and two were brothers. Five of the six were over ten years of age and the sixth was eight years-old, and thus were able to tell someone that they were being abused."<sup>22</sup> No separate analysis was given of these six patients. The report noted that while "all but one child had a complete physical examination," "when information in the chart concerning the injury was reviewed, it was found, in most cases, to be poorly documented. Such documentation should contain sufficient information to indicate if abuse was considered, and if it was ruled out by the attending physicians . . . the chart is not useful as a document in court to support a charge of child neglect, unless it is complete."<sup>23</sup>

Of the physically abused children who were seen at this hospital during six months, "in 56 of the cases, recommendations were made, but these were reviewed at a subsequent meeting for only 37 cases."<sup>24</sup>

## Clinical Research on Injured Sexually Abused Children

The review of Canadian clinical research reporting findings on child abuse between 1957 and 1980 shows that towards the end of the 1970s, there was a growing medical concern about the documentation of child sexual abuse. What is common to these medical reports, with the exception of the 1966-70 Nova Scotia study, is that the research focussed on the experience of small groups of patients examined and treated at hospitals. In this respect, these findings cannot be generalized to encompass the experience of all medically examined young victims of sexual assaults. The findings of the National Population Survey indicate that when sexually assaulted children seek medical attention, a substantial proportion of this care is provided by family doctors in community practice.

The central focus in these reports was to provide a social description of the sexually abused child. Less attention was paid to reporting: the findings of the medical histories of these patients; the results of the procedures undertaken; the clinical management of the children; and a listing of their physical and emotional injuries. Accordingly, the presentation of findings in these reports precludes: a consideration of the effects of the sexual assaults on very young children; an analysis by the sex of the victims of these experiences; and a relevant review of the legal implications of the findings. None of the reports, for



instance, provided a detailed listing by the age and sex of the children in relation to: the acts committed; how the children were injured and the medical procedures undertaken. The classification of the types of sexual acts committed and the type of association between the victims and suspected offenders was typically listed in general, and non-replicable, terms. The definition of incest, for instance, was variously broadened to include all types of sexual acts committed; these acts were listed in relation to broad and vaguely defined groupings of family members and relatives. As a result, it is not possible drawing on the findings of these reports to determine how many incest cases were examined, who the suspected offenders were and the specific nature of the harms the victims may have experienced.

Like the research on the extent of sexual offences occurring in the population undertaken by non-medical disciplines (see Chapter 4), this body of clinical research on child sexual abuse is professionally insular. None of these reports cited any of the available Canadian social surveys on the occurrence of sexual offences. There was also virtually no cross-referencing between the results obtained in these studies and those reported in other Canadian clinical studies dealing with these problems.

**In reviewing this research, the Committee sought to learn what was known with respect to: the medical assessment of injuries sustained by sexually abused children; the clinical assessment of the short and long-term consequences for the child of these assaults; and the procedures undertaken in the assessment and treatment of sexually abused patients.**

The review of the main published reports on physical and sexual child abuse for Canada identified 426 medically examined children who had been sexually assaulted (Table 30.1). In five of the clinical research reports, primarily those focussing on physical child abuse, either no information was given separately about cases of child sexual abuse or the findings were aggregated for the victims of all categories of child abuse (battered child syndrome, physical and emotional abuse, maltreated child, neglect and sexual abuse). In the three remaining clinical research reports, findings were given for 349 sexually abused children, of whom 42 (12.0 per cent) were diagnosed as having been physically injured.

In two of the three research reports in which findings were reported on the physical injuries sustained by sexually abused children, no description was given of these injuries which may have ranged from minor scratches and bruises to more serious conditions. The Committee learned from the researchers who had conducted one of these studies that the reason why more specific information on physical injuries had not been reported was that this information was found to have been incompletely listed in the patients' hospital charts. **A detailed listing of the injuries sustained by sexually abused children was given in only one report which gave details of injuries for four young patients. In relation to published medical reports dealing with injuries sustained by sexually assaulted children and youths, these sources do not comprise a sufficient**

Table 30.1

**Physical Injuries of Sexually Abused Children  
Reported in Canadian Clinical Medical Research Studies**

Research Report	Group Studied	Number of Sexually Abused Children (n = 426)	Physical Injuries Associated with Sexual Assault <sup>1</sup>
Winnipeg (1957-1971)	physically abused children (132)	1	possible indication of sexual assault for one child, but not so identified
Edmonton (1965-1967)	rape victims (100)	38	no separate analysis for experience of 23 children
Nova Scotia (1966-1970)	physically abused children (59)	1	no injuries reported
Toronto (1972-1976)	child sexual abuse (50)	50	no findings given of types of injuries to 24 children
Ottawa (1976-1979)	child sexual abuse (31)	31	no findings reported
Montreal (1977-ongoing)	child sexual abuse (125)	125	specific types of injuries listed for 4 children
Toronto (1977-1978)	child sexual abuse (174)	174	no findings given of types of injuries to 14 children
St. John's (1980)	abused/neglected children (78)	6	no separate analysis given for 6 patients

<sup>1</sup> Findings on Injuries:

(1) Total suspected, indicated cases	66
(2) Total confirmed cases	42
(3) Total confirmed cases providing information on specific injuries	4

basis upon which to assess the nature and extent of the physical and emotional harms experienced by these young victims.

The findings of clinical medical research reports on child sexual abuse suggest that, of the young patients who had been medically examined, seven in eight had not been physically injured. To the extent that this observation is valid, it is apparent that the provision relating to inflicting bodily harm specified in two of the forms of the sexual assault offence introduced by the 1983

amendments to the *Criminal Code* would have been inapplicable in most of these cases as a legal basis for the prosecution of suspected assailants. While one in eight of the clinically assessed victims of sexual assault was reported to have been injured, even this information was incomplete. For the majority of these cases, no information was given specifying in detail the nature of these physical injuries.

In only two of the research reports, those undertaken at the Centre Hospitalier Saint-Justine and the 1972-76 study at the Hospital for Sick Children, were results given about the length of time that elapsed between the sexual assault of a child and the provision of medical care. The findings of these studies suggest, but do not confirm, that the length of the interval taken to seek medical attention may have affected whether there was a clinical identification of injuries associated with sexual assaults. The inference which can be drawn from these studies is that the longer this interval is, the greater likelihood there is that the minor injuries incurred (e.g., scratches, bruises or inflamed genitalia) may have healed before the examination occurred. Therefore, where long delays occur in seeking medical care, a record of such injuries either may be unknown or omitted from the results of the medical examinations of these young patients. These trends are only partially documented in the clinical research reports. In no instance were the results of the examinations considered in relation to the types of sexual acts committed against children.

The results of the clinical research reports contain little information about how many of these sexually assaulted young patients were routinely examined in relation to whether they may have contracted a sexually transmitted disease. In the absence of sufficient statistical documentation of the clinical findings for children who have been subjected to unwanted intercourse, it has on occasion been assumed that the risk of their contracting a venereal disease either does not occur or is minimal. With the exception of one clinical research report, this body of research does not address this issue.

None of the published medical research reports considered in this review provided an assessment of the emotional and behavioural harms experienced by these sexually abused patients. An anomaly which emerges in the clinical research on child sexual abuse is that, while the most extensive documentation of how children may have been harmed is reported in the studies on incest, the documentation of injuries in these sources is given in relation to emotional and behavioural consequences. No findings are given in the research studies on incest about how children may have been physically injured. The prevalent assumption in the reports on incest is that young incest victims are seldom, if ever, physically injured. This assumption appears to have been reached without benefit of confirmation in the form of the published results of physical examinations undertaken by physicians.

The Committee acknowledges that the clinical research studies contain relevant information about certain dimensions of child sexual abuse. These sources, however, provide insufficient documentation upon which valid conclusions can be reached about: how many sexually assaulted children are treated



by physicians; the usual types of clinical services provided for them; how they may have been injured; or the types of medical and social services required to provide these patients with more effective protection.

## Hospital Child Sexual Abuse Programs

Clinical programs for physical child abuse were initially started at a small number of Canadian hospitals during the 1960s. By the end of the 1970s, it was estimated that about two dozen hospitals across the country had established similar units. The commonly-held objectives of these programs were: to foster the earlier identification of these problems; to develop services requisite for their assessment and treatment; and to establish a multidisciplinary approach for the care and follow-up of these young patients. At several hospitals across Canada, an informal liaison initially evolved between hospital staff and members of community agencies. As the number of physically abused children who were identified grew, these informal arrangements were gradually replaced by the appointment of co-ordinating committees and the designation of special clinical teams.

Most of these special hospital programs were initially designed to serve the needs of all types of abused and neglected children. This approach to the organization of clinical services is still followed in many hospitals. In all of the initially established programs, child sexual abuse was recognized as an important problem, but one that, because of the small number of cases seen, did not warrant the separate development of special services or units. This situation changed first in a number of major tertiary hospitals which, in response to a heavier caseload of sexually abused children, began to develop guidelines and examination protocols for the management and treatment of these patients. By the end of the 1970s, several hospitals across Canada had established special clinical programs along these lines.

Information on the objectives and services provided by hospital programs for child sexual abuse is typically found in institutional reports prepared for hospital administration or medical advisory committees. The examples of the special programs established at a number of Canadian hospitals reported here do not constitute a representative cross-section of all such services. The programs listed, however, illustrate the breadth and diversity of the steps which have been taken.

### Dr. Charles A. Janeway Child Health Centre (St. John's)

This hospital's Child Protection Team is comprised of: a chairman who is a paediatrician; the Directors of Ambulatory Services and Social Work; a representative of the provincial Department of Social Services; and on an *ad hoc* basis, other professionals from the hospital or community agencies who are invited to provide consultation on specific cases.

At its weekly meetings, the Janeway Child Protection Team may perform the following functions:

1. Review the paediatric assessments of suspected child abuse victims.
2. Review the social work assessments of these patients.
3. Consider the need to report suspected or confirmed cases of child abuse to the provincial Director of Child Welfare.
4. Prepare recommendations for cases for which referrals may be made concerning the management and subsequent treatment of these patients.
5. Review the clinical findings that may serve as the basis for providing expert testimony to courts and reports made to the Department of Social Services.
6. Serve as a focal point for the training of staff concerning child abuse.
7. Provide the focal point for the ongoing monitoring of the treatment of selected cases.

The Team is reported to act as an advocate for the development of resources required in relation to services for abused children.

## Centre Hospitalier Sainte-Justine (Montreal)

The membership of this hospital's multidisciplinary Sexual Abuse Team includes representatives of a half dozen departments in the hospital (e.g., paediatrics, gynaecology, microbiology, etc.). The hospital has designated two of its social workers to handle all sexual abuse-related cases.

Most of the victims seen by the Team are brought to the Emergency Room—usually by the police. As the reputation of the service has become more widely known, the number of referrals from other departments in the hospital and of self-referred patients has increased.

Upon arrival at the hospital, the patient is seen by a paediatrician and, if necessary, by a gynaecologist (the latter is routinely called upon to attend most victims between ages 12 and 18, but to fewer prepubescent children). In the Emergency Room, a chart is completed for each patient. In addition, a basic information sheet on the offence is completed as well as a special government accident form for Le Comité de la protection de la jeunesse. The charts and basic information sheets are forwarded to the hospital's Child Protection Clinic, while those of the 12 to 18 year-olds are sent to the Adolescent Clinic of the Department of Paediatrics. Following intake, all cases are reviewed at intervals of two weeks and three months.

## Montreal Children's Hospital

One of the activities undertaken by Quebec's Le Comité de la protection de la jeunesse has been to seek to improve the co-ordination between professionals in Quebec hospitals in dealing with physical and sexual abuse cases. A program of this sort had been initially developed for child abuse in 1962 at the Montreal Children's Hospital, operating out of the Emergency Room. A child arriving at this unit, who presents signs of being sexually abused, will first be seen by a nurse who notes the child's appearance and stated reasons for being brought to the hospital. Next, the child is taken to a private cubicle and examined by a resident or intern (where possible, of the same sex as the child), who follows the procedures outlined on a "sexual assault protocol" prepared by the hospital.

A social worker is on call for consultation at the Emergency Room. If a child suspected to have suffered abuse is brought to this unit during the day, the social worker will be called to assess the child's situation. Where the child is brought in at night or on a weekend, the medical staff attending the child will use their best judgment in deciding whether to call the social worker immediately or to arrange for an appointment the next day. However, when an immediate "social management" decision must be made (e.g., whether to make a social admission of the child as an inpatient), the social worker will be paged. Where the suspected abuser is the child's father, or another person living with the child, the social worker may be called in to recommend a "social" admission. If this happens, the child remains an inpatient until the family situation is assessed and measures are taken to assure the child's security.

If the child is treated as an outpatient and released, an appointment for a follow-up in the hospital's gynaecology clinic will be arranged, and the child's case will also be referred to an accessible community-based social agency. The case is likely to be referred to an outside agency if it is judged that the child does not require the services of other disciplines available at the hospital.

The hospital maintains a multidisciplinary Child Protection Committee. The Committee receives and keeps records of abuse cases, and confers on the handling of especially difficult or problematic cases, such as those involving incest or high risk of abuse. Professionals from outside the hospital may be invited to participate in the Committee's conferences.

## Children's Hospital of Eastern Ontario (Ottawa)

The child protection program of this hospital, established in 1974, operates at two levels. The Executive Committee is concerned with the development of policies in relation to child abuse. The membership of this group consists of: the Head of Emergency Services, the Head of Ambulatory Care, the Senior Hospital Social Worker, the Head Nurse of Emergency Services, a paediatrician, a psychiatrist, a surgeon, the Vice-President of Professional Services, the



Co-ordinator of Child Abuse Programs and the Supervisor of the Services Division from the local Children's Aid Society, the Director of the Ottawa-Carleton Regional Health Unit and a Community Volunteer. Responsibility for consultation on specific cases is assigned by the Executive to the Child Protection Team, whose membership represents emergency care, nursing, social work, psychiatry and paediatrics.

Until October, 1981, the membership of the Team also included a case worker from the local children's aid society and a public health nurse. At the time, in response to guidelines on the reporting of child abuse cases prepared by the Ontario College of Physicians and Surgeons, the Ontario Medical Association, the Ontario Ministry of Health and the Ontario Ministry of Community and Social Services, these external members were dropped from the child abuse Team. This guideline stipulated that:

The physician should be particularly careful not to discuss the details of the case with anyone except where normal professional consultation with colleagues is needed. This may include discussion within a hospital-based child abuse committee comprising members of the hospital staff and which may include paramedical members, so long as it does not have members representing agencies outside the hospital. The requirements of confidentiality about the deliberations of such a committee are subject to the *Public Hospitals Act*. Specifically, in cases which have become public knowledge, he should be extremely wary of any discussion with persistent members of the news media, or concerned members of the public, politicians, etc.<sup>25</sup>

The members of the Team meet weekly; its work includes:

1. Confirmation of diagnoses of child abuse.
2. Reporting abuse cases to the local children's aid society.
3. Co-ordination of in-hospital resources for the effective short-term management of cases.
4. Co-ordination of the professionals involved in the management of cases to assure that external agencies receive relevant information.
5. Recommendation of long-term treatment options.
6. Review and follow-up of previously admitted cases.

The members of the Committee provide in-service, child abuse-related educational programs for hospital staff. Activities in public education include: media appearances; and lectures to medical and nursing students and to community groups.

The Committee has developed procedures intended to facilitate the clinical identification of child abuse cases. One of these measures is a specialized protocol to be used in the emergency room as a procedural guideline for the management of child sexual abuse cases.

The Committee's Alert System was designed to permit the early discovery of child abuse cases. The system employs a screening questionnaire—the Home

Accident Injury Survey—which must be filled out by the nursing staff or medical personnel, for every case ostensibly involving any accident in the home. The screening of these forms is undertaken by the Emergency Social Worker in consultation with the Head of Emergency Room Services.

Where the responses to the questionnaire raise concerns or suspicions, a preliminary assessment is carried out. A code based on the use of different coloured decals has been developed; black decals are affixed to the medical charts of patients against whom it has been confirmed that sexual or physical abuse has been committed. Blue decals denote cases in which there is judged to be a high risk of abuse or neglect. The code is used as an instantaneous means of alerting medical staff to the nature of the cases that they are handling.

Finally, a card file has been developed in which are recorded the names of all children whose cases have been discussed during Child Protection Committee meetings. The Alert System was designed as a means of promoting the early—and where possible, the immediate—identification of abuse cases, in order to eliminate unnecessary delays in intervention.

## Hospital for Sick Children (Toronto)

Established as part of the Child Abuse and Neglect Program set up in 1973 at the Hospital for Sick Children, the Sexual Abuse Team consists of: a paediatrician, a psychiatrist, a social worker, an emergency room nurse, a public health nurse and a secretary. The social worker is a hospital employee, assigned to the Team on a full-time basis. The Team's responsibilities include the following duties:

1. The identification of sexual abuse cases presented at the hospital.
2. The medical treatment of such cases.
3. Providing a place of safety by means of victim hospitalization (only occasionally required).
4. Public and professional education.
5. The collection of statistics on all cases.
6. The provision of support and consultation to other facilities and agencies; this may involve accepting referrals from other medical centres and hospitals.
7. Resource development (on a limited scale).
8. The collection of evidence in case of trial and provision of expert testimony.

The Team acts as a central co-ordinating agency for marshalling resources to treat child sexual abuse cases. Fulfilling this function led to the development of liaisons between the Team and the Children's Aid Society and the Metropolitan Toronto Police Department. Involvement with law enforcement may include the referral to the Team of victims identified through police investiga-

tions. Also, in cases in which it is felt that the police may be reluctant to press charges against an offender, and the Team considers prosecution necessary for the victim's protection, police representatives may be invited to attend case conferences.

In the management of cases of child sexual abuse, the Team conducts a physical examination of the child and prescribes whatever form of medical treatment is indicated. The preference is to de-emphasize the use of the hospital Emergency Room as a site for conducting initial examination and assessment procedures; since many of the cases which come to light involve sexual abuse that has been ongoing for an extended period of time, they do not qualify, strictly speaking, as emergency situations (i.e., as suddenly arising crises requiring instant treatment in order to guarantee the patient's medical safety).

It is felt that bringing a child into an emergency room immediately after the sexual abuse is discovered—perhaps in the middle of the night—constitutes an overly emotional reaction which may be psychologically injurious to the child without providing significant medical benefit.

The Team encourages community case workers who learn or suspect that a child has been sexually abused to arrange for an appointment to have the child receive a medical examination as soon thereafter as possible. The examination usually is conducted within a day of contact having been made.

The Sexual Abuse Team manages the medical and psychosocial aspects of each case. Physical examinations are conducted; medical problems arising from sexual abuse are identified; and the most appropriate forms of treatment are assessed and arranged. The Team's social worker and psychiatrist often function in tandem, with the psychiatrist treating the offender, and the social worker providing therapy to the victim and her mother, either separately or together (although this pattern of treatment may vary from case to case). Where possible, an attempt is made to involve the victim's siblings in the therapy process.

The Team advocates the development of policies like those of the Children's Hospital of Winnipeg—that is, a greater and more consistent use of the courts and the criminal justice process to induce offenders to seek treatment and to protect the child by effecting the offender's removal from the home. The Team favours court-ordered treatment, as opposed to imprisonment, and further believes that the offender's bail should be made conditional on his agreement to stay away from the family.

The Sexual Abuse Team provides evidence for use in the trial of persons charged with sexual abuse-related offences. The evidence falls into two categories. First, there is the physical proof of abuse, in the form of specimens and clothes collected at the time of the victim's medical examination. Second, the Team members are called upon to give expert testimony concerning victims and/or alleged offenders with whom they have had contact.



## Children's Hospital of Winnipeg

In conjunction with the clinical research on physical child abuse undertaken at this hospital, hospital-based paediatricians and representatives of local children's aid societies began meeting in 1968 on a regular basis to review the diagnoses and management of physically abused children. These informal arrangements continued until the mid-1970s, when more structured procedures evolved that included consultation between hospital staff, the police, local child protection services and the provincial Department of the Attorney General. At this time, representatives from each of these programs began to meet on a regular basis to review cases of suspected child abuse. In a review of the development of this program prepared for the Committee, it was noted that:

The regular participation of the Police in cases of child abuse was reluctantly received by the medical and social work contingent and, only through the case-by-case involvement and time, did the group's members begin to understand, accept and respect the other's professional biases and value the various approaches required in the management of child abuse."

The special program at the Children's Hospital provides for the assessment and treatment of victims, offenders, and where indicated, members of the victim's family. In the physical examination of these patients, the physician's role is:

1. To document the history given by the victim by medical evidence, where possible.
2. To obtain forensic evidence for possible legal proceedings.
3. To treat the acute problems of physical trauma, sexually transmitted disease and the risk of pregnancy.
4. To follow-up the patient for psychological effects of trauma, pregnancy, sexually transmitted disease and assess with respect to the need for referrals for long-term therapy. This may require:
  - (a) initial examination with full forensic examination on the day of the victim's reporting of the assault;
  - (b) a booked appointment for assessment; i.e., in a "cold" incest situation;
  - (c) several assessment visits, i.e., if a traumatized child requires time to develop trust before she can allow the intrusion of a pelvic examination;
  - (d) immediate examination under anesthesia, i.e., where there are perineal and/or vaginal lacerations; and
  - (e) at least one follow-up visit for follow-up cultures and VDRL and psychological re-assessment.

In addition to the physical examination, the hospital offers treatment for non-offending parents as well as for victims and abusers. The treatment given is usually in the form of group therapy or self-help and places strong emphasis on assertiveness training. Where the victim and the other members of her family wish it, the goals of treatment may include re-uniting the offender with

the family; however, no pressure is placed on the family to adopt this goal, and typically, the process of reunification is a gradual and protracted one.

The treatment of some families has continued from the program's inception; the length of the treatment in these cases is seen as a means of addressing any residual problems in the family and of monitoring for any sign of recurrent abuse. The philosophy in providing this treatment is that every professional worker who comes in contact with the victim must communicate to the child that his or her story is believed, that he or she has done nothing wrong and that he or she is in no way to blame for the offender's actions.

A detailed set of procedures has been developed with respect to the management of offenders. An initial psychological assessment of the abusing parent may be ordered (and usually is carried out by a private practitioner) to determine whether the accused's problem is psychological or behavioural. Decisions concerning the action to be taken are made by the Sexual Abuse Sub-Committee at its twice monthly meetings.

The primary avenue of treatment where prosecution is stayed, is the unit operating in the Children's Hospital. Any failure by the abusive parent to attend treatment sessions, or to make a serious effort at correcting his behavioural problems, is reported in writing by the hospital's staff to the Crown Attorney; such lapses may trigger a resumption of prosecution. It is intended that the offender be given a tangible incentive to work earnestly at rehabilitating himself.

Where an abusive parent has been charged with an offence more serious than indecent assault (e.g., where he has had sexual intercourse with the victim), every effort is made to persuade the accused to plead "guilty", and then to offer him treatment at the Children's Hospital. Such treatment will continue until the trial date. If the personnel providing the treatment feel that the accused's treatment will be cut short prematurely by an early trial date, they will so advise the Crown Attorney who then may move for a postponement.

The example set by the Winnipeg program in developing wide-ranging multidisciplinary co-operation in dealing with child abuse has been influential throughout the province. For instance, a small experimental child abuse unit has been established at the Churchill Health Centre. The objective in setting up this facility was to assess the extent to which a specialized treatment unit (like that operated at the Children's Hospital of Winnipeg) could be effective in making its services accessible to smaller, outlying or isolated rural communities.

### Alberta Children's Hospital (Calgary)

This program, established in 1975, is operated jointly by the Children's Hospital and the Ambulatory Care Centre of Foothills Hospital. The multidis-

ciplinary members of this program are responsible for the assessment, treatment and follow-up of cases characterized by: suspected or known non-accidental physical injury; the non-medical failure to thrive or lack of banding; and patients deemed to be at high risk of being physically injured.

The evaluation procedures followed by this program include: paediatric examination; social work assessment; co-ordination of past medical and social data; psychological testing; psychiatric and nursing assessments; and evaluation of parental skills.

The program's policy is to admit all suspected abuse victims for short-term hospitalization in order to permit diagnoses and the formulation of appropriate treatment plans. The treatment plans are developed at dispositional conferences involving members of an 18 member advisory committee. Treatment may entail: parent education groups designed to inculcate appropriate expectations and attitudes and to develop parental skills; psychotherapy; family therapy; marital counselling; play therapy; outpatient treatment for psychiatric disorders; and crisis intervention.

The program emphasizes the co-ordination of resources and several appropriate agencies may be contacted to assist in handling a given case. The program also stresses follow-up through the development and deployment of such complementary resources, such as: crisis nurseries; the use of lay therapists; and education programs for professional groups and the public.

## Vancouver Medical Clinic

Established as a pilot project to deal exclusively with child sexual abuse cases, the medical clinic established in Vancouver by the British Columbia Ministry of Human Resources represents an unusual community-oriented approach to these problems. The clinic, in operation since 1981, was designed: to develop procedures and protocols for the medical examination of sexually abused children; to perform such examinations; to supply medical and legal reports and expert court testimony; and to conduct programs of professional education aimed at improving the level of care provided in cases of child sexual abuse by attending physicians and hospital personnel.

While referrals to the clinic were made from a number of sources, most of the children were referred directly by social workers or the local offices of the Ministry of Human Resources. The clinic helped to promote the establishment of a Sexual Assault Emergency Centre which began its work at the Shaughnessy Hospital in 1982.



The Centre was staffed by 11 physicians, and by means of assignments based on a rotating roster, a physician was on call at all times of the day. The Centre's services were geared to provide emergency medical services for victims who were age 14 and older.

Younger sexually abused children who required emergency care received services either at the Vancouver Children's Hospital or from physicians on the medical staff of the Centre. The two hospitals are located on the same general site with their emergency rooms being separated by a corridor, an arrangement that facilitates the channelling of patients to the appropriate treatment resource. The Child Abuse Team established at the Children's Hospital in 1975 draws upon an interdisciplinary membership. Its caseload was initially comprised mostly of physical child abuse cases, but in recent years, the proportion of sexually abused children treated at this facility has risen steadily.

What is unusual about the medical programs for child sexual abuse in Vancouver is: the combination of community and hospital-based approaches; the co-ordination of services between different facilities; the availability of especially trained staff on a 24 hour coverage basis; and the development of clinical programs designed specifically to meet the needs of these young patients.

## Emerging Trends in Hospital-based Programs

The case studies of hospital-based clinical programs providing services for sexually abused children document that a number of different practices have evolved in relation to the treatment and management of these patients. These approaches include:

### General vs. Specialized Clinical Teams

In some hospitals, all types of child abuse are managed by co-ordinating committees or clinical teams. In other centres, specialization has evolved in the form of designated units or special teams which are assigned responsibility for the management of child sexual abuse.

### Professional Experience

In some hospitals, the decision has been made to assign only those staff members who have had special training or experience with these problems to the management of child sexual abuse cases. Elsewhere, hospital staff at both the intake and treatment stages may be assigned according to their availability, or on a rotating basis regardless of their prior experience with these problems. As noted in the following chapter, the Committee believes that these workers require special training to work with these children and that funding should be provided for this purpose.

## Composition of Teams

The membership of the child abuse/child sexual abuse teams varies widely in terms of: the representation of different disciplines working in hospitals (e.g., paediatrics, nursing, gynaecology, psychiatry, family medicine, clinical psychology, social work, child life specialists); the co-operation with community child protection services, which ranges from full participation to complete exclusion; and the participation or non-participation of the police, Crown Attorneys and lay persons from the community. There is also much variation with respect to whether all members of a committee or team meet regularly, or whether some members are called upon only in relation to particular cases.

## Provision of Treatment Services

The range of clinical and social services provided by these hospitals varies according to: the types of examinations that may or may not be routinely undertaken with respect to certain types of child sexual abuse; the scope of services provided by social workers; and whether services are provided exclusively for sexually abused children, or are also provided for members of their families and suspected assailants.

## Guidelines and Examination Protocols

Most of the hospitals listed in the case studies had developed guidelines and protocols for the examination of sexually abused children. In some instances, these protocols had been developed for the medical examination of all types of physical child abuse. The contents of the examination protocols vary widely in relation to the identification or non-identification of particular items specified as part of the routine medical examination undertaken for suspected cases of child sexual abuse (e.g., testing for sexually transmitted diseases and how evidence is collected for forensic purposes).

In the course of implementing its National Hospital Survey, the Committee obtained copies of the medical history protocols used at a larger number of hospitals than the number of case studies which have been described. As was the case for the protocols used in the hospitals whose programs have been listed, there was no uniformity in the child abuse protocols of these other hospitals in the classification of items as these related to the identification and examination of child sexual abuse. It was also apparent from the Committee's review that a considerable number of hospitals had no designated procedures in this regard, with these decisions being left to the discretion of attending physicians. This situation contrasts sharply with the procedures adopted in a few major medical centres, in which detailed protocols have been developed with respect to patient management procedures, referral practices and examinations.

## Patient Referral Procedures

Children who are sexually abused may come to the attention of a number of different hospital units, such as: the emergency room; child protection and adolescent medicine departments; and special services involving, among others, gynaecology, paediatrics, psychiatry, general medicine, family medicine, social services and clinical psychology.

In some hospitals, special procedures have been devised to facilitate the reporting and referral of child sexual abuse cases between these different units and to special programs, where these have been established. Arrangements of this kind are not standard operating procedures in all hospitals and, where this is the case, it is unknown how many sexually abused children who are treated elsewhere in a hospital are not reported to a hospital's special program. The Committee learned of instances in several hospitals in which other hospital services, in spite of adopted hospital policies requiring consultation, chose to retain the clinical management of these patients without involvement of the abuse team.

## Outpatient Treatment and Admission to Hospital

Unless sexually abused children had been seriously injured, the unusual case which would invariably be admitted to a hospital, the usual practice was to treat sexually abused children on an ambulatory or outpatient basis. In some instances, exceptions to this practice were made with respect to sexually abused children who, while they may not have been physically injured, were admitted to hospital on "social" grounds as a means of affording them immediate protection.

## Summary

The hospital case studies of special clinical programs for child sexual abuse show that there has been strong leadership taken in mounting comprehensive services for these children in some hospitals across Canada. When the elements of the different programs are considered together, they constitute a broad range of protective care services from the initial identification of cases through to their long-term follow-up. Few of the hospital programs providing special services for sexually abused children incorporate the full range of activities listed in the case studies. In the absence of documentation, the efficacy of particular measures in improving the care and protection of these patients is unknown. It is also unknown whether hospital-based special programs designed to serve these patients are a more effective means of managing their needs than the medical care provided to sexually abused children attended by physicians in community practice. The Committee believes that more complete information than is now available about how the medical care



of sexually abused children is provided should be obtained, and that on the basis of such a review, consideration be given to how the work of these programs might be strengthened. The findings of the National Hospital Survey presented in Chapter 31 indicate that such a review is warranted.

## References

### Chapter 30: Research and Treatment Programs

- <sup>1</sup> Canada. Department of National Health and Welfare. *Child Protection in Canada*. Ottawa, 1981, pp. 120-52.
- <sup>2</sup> Kempe, C.H., F.N. Silverman, B.F. Steele, W. Droegemueller and H.K. Silver, "The Battered Child Syndrome", in J.V. Cook and R.T. Bowles (editors), *Child Abuse: Commission and Omission*, Toronto: Butterworth and Co., 1980, p. 52.
- <sup>3</sup> Bell, G., Parents who Abuse their Children, *Canadian Psychiatric Association Journal*, 18:223, 1973.
- <sup>4</sup> Boone, J.E., The Battered Child: Family Physician's Role, *Canadian Family Physician*, 6:1970, p. 55.
- <sup>5</sup> Segal, S., A Medical Overview of Child Abuse in B.C., *British Columbia Medical Journal*, 18:1976, p. 42.
- <sup>6</sup> Jacobs, J., Child Abuse, Neglect and Deprivation and the Family, in S.M. Smith (editor), *The Maltreatment of Children*, 1978, p. 265.
- <sup>7</sup> Segal, S., *op. cit.*, p. 43.
- <sup>8</sup> Segal, S., *op. cit.*, p. 41.
- <sup>9</sup> McRae, K.N., C.A. Ferguson and R.S. Lederman, The Battered Child Syndrome, *Canadian Medical Association Journal*, 7: 859-66, 1973.
- <sup>10</sup> *Ibid.*, p. 865.
- <sup>11</sup> Ringrose, C.A.D., Medical Assessment of the Sexually Assaulted Female, *Medical Trial Technique Quarterly*, 1968 pp. 245-47.
- <sup>12</sup> Fraser, F.M., J.P. Anderson and K. Burns, *Child Abuse in Nova Scotia*, Halifax, 1973 (mimeo), 295 pp.
- <sup>13</sup> Donovan, M.V., *Sexual Assault of Children: Under Twelve Years of Age*, Toronto: University of Toronto M.A. Thesis, 1978.
- <sup>14</sup> *Ibid.*, pp. 106-107.
- <sup>15</sup> Corsini-Munt, L., Sexual Abuse of Children and Adolescents, *Proceedings of the International Symposium*, Montreal: Editions Etudes Vivantes, 1980, pp. 647-58.
- <sup>16</sup> Wilkins, J., M. Berard-Giasson, R. Gagne, G. Rivard and J.-Y. Frappier, Les assauts sexuels chez les enfants et adolescents: Etude de 125 cas, *l'Union Medicale du Canada*, 108: 1304-08, 1979.
- <sup>17</sup> Special Report presented to the Committee, October 19, 1981.
- <sup>18</sup> Shah, C.P., C.P. Holloway and D.V. Vakil, Sexual Abuse of Children, *Annals of Emergency Medicine*, 11: 18-23, 1982.
- <sup>19</sup> *Ibid.*, p. 42.
- <sup>20</sup> *Ibid.*, p. 43.
- <sup>21</sup> Wood, E., *Child Abuse in Newfoundland: A Review of Cases Presented to the Child Protection Team of the Janeway Child Health Centre: January to June, 1980*. St. John's, 1980 (mimeo), 52 pp.
- <sup>22</sup> *Ibid.*, p. 33.
- <sup>23</sup> *Ibid.*, pp. 38 and 37.
- <sup>24</sup> *Ibid.*, p. 43.
- <sup>25</sup> Reporting Child Abuse: Guidelines to Physicians, *Ontario Medical Review*, 48: 559-60, 1981.





## Chapter 31

# Injuries Sustained

The National Hospital Survey was undertaken to provide documentation of the nature of the physical injuries and emotional harms sustained by sexually assaulted children and youths, the medical examination and treatment of these conditions, and to give an assessment, if feasible, of the long-term consequences for the young victims. On the basis of the National Population Survey, the Committee learned that only a small proportion of persons who as children had been sexually assaulted stated that either they had been injured or had obtained medical attention. The survey's findings also showed that when medical care had been sought, about half of the persons had turned to physicians in community practice and the other half had obtained care at hospitals. It is the experience of the latter group for which research findings are given in this chapter.

In its review of previously completed clinical research, the Committee had found that there was insufficient information available about the medical procedures typically followed in cases of this kind and that the documentation of the nature of the injuries and harms sustained by victims was incomplete. The results of the other national surveys — population, police forces, child protection services — showed that only a small proportion of victims was known to have been injured. In none of the other national surveys, however, was precise and detailed information available in relation to the medical examination, treatment and followup of sexually abused children.

## Design of the Survey

In designing the research protocol to collect information in relation to the clinical assessment and treatment of sexually assaulted children, the Committee drew upon: its Terms of Reference; the issues and research findings identified in the available Canadian clinical research on child sexual abuse; the history-taking and medical examination protocols used in a number of hospitals across the country; the results of a small pretest; and an assessment of the revised protocol provided by an expert medical advisory committee.

The Committee's Terms of Reference either directly specified or subsumed a number of medical, social and legal issues for which specific questions were developed in the hospital research protocol. These items included, for instance, documenting the medical procedures undertaken, the results of examinations, an assessment of the injuries incurred, and legal questions pertaining, among others, to the age, sex and types of association between patients and their assailants, the interval between an incident and when medical care had been received, and whether cases of confirmed child sexual abuse had been reported to external services (e.g., child protection services, the police).

On the basis of these preparatory steps, a draft research protocol was pre-tested at three hospitals. These hospitals were: The Hospital for Sick Children (Toronto) — 19 children; the North York General Hospital (Toronto) — two children; and the Children's Hospital of Winnipeg (Winnipeg) — eight children. Seven of the 29 cases had involved incest and in four instances, some form of incestuous behaviour was reported to have occurred (i.e., sexual acts other than intercourse). There were 11 other types of sexual acts committed against children; in seven cases, insufficient information was available to determine what acts had been committed or the type of association between victims and suspected assailants.

The pilot testing of the draft protocol indicated that in the absence of certain types of essential information in some hospital charts, it would be necessary, where feasible, to obtain the findings directly from physicians and other health personnel who had cared for these children. This procedure was adopted when the survey was subsequently implemented. The pretest also sharpened the identification of the denominator to be used in relation to which types of cases should be included or excluded in the survey. It was learned, for instance, that while some hospital child sexual abuse teams had reviewed cases, some of them had not been medically assessed or admitted to an outpatient service. In one hospital, a quarter of the cases reviewed by the hospital team fell into one or other of these categories.

The appointment records for patients' visits proved to be an inappropriate means upon which to base the selection of cases for inclusion in the survey. In a number of instances, it was found that appointments had not been kept or that a family member other than the sexually abused child had visited the hospital to obtain advice or counselling. On the basis of these considerations, the cases of child sexual care included in the final survey were limited to those known to a hospital team and for whom a medical assessment had been provided. Excluded were those children whose condition had not been identified by the attending staff and those instances where personnel may have known that child sexual abuse had occurred but had not reported these cases to the hospital's child abuse and/or child sexual abuse teams.

The revised research protocol was reviewed by an Expert Medical Advisory Committee convened by the Committee. Based on this assessment, the final format of the research protocol was prepared and in co-operation with 11 major tertiary hospitals across Canada, the survey was undertaken which

included all reported cases of child sexual abuse that had been medically assessed and for whom treatment had been provided (for which information could be obtained) between January 1, 1981 and June 30, 1982.

In its contacts with several other hospitals across Canada, the Committee learned that it was believed that few sexually abused children had been examined or treated, that it was deemed to be too difficult to identify these conditions, and that insufficient information was available about cases of this kind. Thus, it was on the basis of these considerations that the Committee sought and received the co-operation of several major hospitals known to have specialized in the examination and treatment of sexually abused children. After the hospital survey started, several other hospitals offered to participate; due to constraints of time and assigned resources, their inclusion in the survey was not feasible.

The hospitals participating in the survey were located in eight provinces. In most instances, they were major tertiary institutions providing specialized services for regions within and beyond provincial boundaries. The hospitals were:

- Dr. Charles A. Janeway Child Health Centre (St. John's)
- The General Hospital Health Sciences Centre (St. John's)
- Izaak Walton Killam Hospital for Children (Halifax)
- Centre Hospitalier Sainte-Justine (Montreal)
- The Montreal Children's Hospital (Montreal)
- The Children's Hospital for Eastern Ontario (Ottawa)
- The Hospital for Sick Children (Toronto)
- The Children's Hospital of Winnipeg (Winnipeg)
- University Hospital (Saskatoon)
- University of Alberta Hospital (Edmonton)
- Vancouver General Hospital (Vancouver)

In the collection of information, the ethical codes concerning research were observed in obtaining approval of the participating hospitals and in the collection of information. There was no identification of the names of the patients whose experience was documented.

In reporting the findings of the survey, the Committee recognized that the group of 623 cases for whom information was obtained does not constitute a sample of: all children in the population who have been sexually assaulted; all such victims who may have sought medical care; and cases of this kind examined by other services in the participating hospitals. The Committee acknowledges these limitations in relation to the findings obtained.

In light of the findings obtained in previous clinical research on the medical assessment of child sexual abuse and the documentation of injuries sustained, however, **the Committee believes that the medically assessed experi-**



ence of the 623 sexually abused children constitutes the largest group for whom such information has yet been obtained in Canada, and possibly, elsewhere. Until more complete information along these lines is available, the Committee believes that the survey's findings obtained from major hospitals across Canada constitute a reasonably reliable basis upon which to reach conclusions and upon which recommendations can be grounded.

The findings obtained in the National Hospital Survey are given in the following three sections of this chapter, respectively: characteristics of patients; medical examination and injuries; and hospital management of sexually abused children.

## Characteristics of Patients

A summary of the characteristics of sexually assaulted children and youths examined and treated at the 11 hospitals is given in Chapter 7, *Dimensions of Sexual Assault*. These findings are not re-introduced here except to recall that victims known to hospitals typically were somewhat younger, more were females and more had experienced serious sexual assaults than victims whose experience was documented in the national population and police force surveys. As noted in Chapter 6, following an incident involving sexual assault, one of several types of assistance may or may not be sought, and only one of these involves turning to hospitals for medical care. It is reasonable to presume that when such assistance is sought, the victims, their families or guardians, and professional workers believed that medical attention was needed.

In comparison with how the police and child protection services learned of cases of sexually assaulted children and youths, the patients referred to hospitals fell in between the two polar trends involving patient and family-initiated contacts and those originating from professional services. Unlike cases known to the police in which a majority of the referrals were initiated by victims, family members and friends or acquaintances, these sources accounted for about a third (31.1 per cent) of the referrals of male patients and about two in five (44.3 per cent) of those for female patients.

What is unexpected in the findings of the National Hospital Survey is the small fraction of cases in which these patients were referred by other physicians. Such referrals were made for only one in 12 male patients (8.1 per cent) and for one in about 17 female patients (6.0 per cent). An inference that can be drawn from these findings is that physicians in community practice who treat sexually abused children may believe the care that they have provided is sufficient, and consequently, that the special services offered by a growing number of hospitals are not required.

A major difference between the sexually assaulted children seen at hospitals and those whose experience was documented in the other national surveys was the high proportion of incidents involving actual or attempted vaginal and anal penetration.

Acts Involving Actual/Attempted Penetration	Male Patients (n=74)	Female Patients (n=549)
	Per Cent	Per Cent
Vaginal penetration (actual/attempted)	—	64.4
Anal penetration (actual/attempted)	47.4	7.5
TOTAL	47.4	71.9

Attempted penetration included incidents in which a penis, finger/hand or object had been used by an assailant against a victim. Actual or attempted acts of penetration had been committed against over seven in 10 (71.9 per cent) young female patients and almost one in two (47.4 per cent) male patients. **In comparison with the children whose experience was documented in other national surveys, a majority of the patients examined at the 11 hospitals had been victims of serious sexual assaults, and on this basis, proportionally more may have sustained physical injuries and emotional harms.**

## Medical Examination

### Presenting Complaint

“Presenting Complaint” is a term used by physicians to refer to a problem as it is perceived and described to them by a patient. The presenting complaint may consist of: a sensation, such as a pain in the abdomen; a visible entity like a swelling; a report of an occurrence, for example, exposure to an infectious disease; or a need for assistance, such as diet counselling in weight reduction. The presenting complaint may be identical to a physician’s diagnosis, such as when a patient comes for help with acne, and the diagnosis is, indeed, acne. However, the diagnosis may be quite different from the complaint, for example, when a patient complains of back pain and the diagnosis is a kidney infection.

In the National Hospital Survey, the presenting complaint of about nine in 10 patients (88.8 per cent) was “alleged sexual abuse” (Table 31.1). For nine patients, incest was specified, and in one instance, an incestuous rape. Alleged sexual abuse by itself was the presenting complaint in 490 of 553 patients. Alleged sexual abuse associated with reproductive tract symptoms (pregnancy or genital discharge, infection, soreness, bleeding), behavioural problems (school difficulties, suicide attempt), abdominal or urinary problems, or physical abuse accounted for 43 of the 553 patients. Sexual assault, sexual relationship (both undefined in the charts) and rape, 11 cases in all, completed the alleged sexual abuse group.

Table 31.1

## Presenting Complaints of Sexually Abused Children and Youths

Presenting Complaint	Males		Females	
	Number	Per Cent	Number	Per Cent
<i>I. Alleged Sexual Abuse</i>	68	91.8	485	88.3
• Alleged sexual abuse only (ASA)	61		429	
• ASA and vaginal discharge, bleeding, infection; pregnancy or vaginal/penile soreness, sexually transmitted disease (STD)	1		12	
• ASA and behavioural problems, school problems and suicide attempt	3		14	
• ASA and alleged physical abuse	2		9	
• ASA and abdominal pain or Enuresis	0		2	
• Incestuous Relationship	0		8	
• Rape/Incest	0		1	
• Rape	0		7	
• Sexual assault, recurrent and sexual relationship	1		3	
<i>II. Alleged Physical Abuse or Injuries</i>	2	2.7	6	1.1
<i>III. Reproductive Tract Symptoms</i>	0	—	22	4.0
• Vaginal discharge, discharge and abdominal pain, bleeding and STD	0		13	
• Pregnancy, contraception, therapeutic abortion	0		8	
• Vaginal laceration	0		1	
<i>IV. Psychological/Behavioural</i>	1	1.4	19	3.5
• Suicide attempt or ideation, drug overdose	0		9	
• Behavioural problems, need to talk, disturbed sleep, panic disorder, emotional assessment	1		10	



Table 31.1 (continued)

## Presenting Complaints of Sexually Abused Children and Youths

Presenting Complaint	Males		Females	
	Number	Per Cent	Number	Per Cent
<i>V. Physical Symptoms and Miscellaneous</i>	2	2.7	15	2.7
• Abdominal pain, nausea and vomiting	0		5	
• Blackouts/fainting	0		2	
• Backache, pneumonia, asthma, visual impairment, hernia repair follow-up	1		5	
• Burn, hepatitis	1		1	
• Came for physical examination	0		2	
<i>VI. Not Reported — Total</i>	1	1.4	2	0.4
<b>TOTAL</b>	<b>74</b>	<b>100.0</b>	<b>549</b>	<b>100.0</b>

*National Hospital Survey.*

The presenting complaint in 22 of the 623 children involved reproductive tract symptomatology without allegations of abuse, including: vaginal discharge, bleeding, laceration or sexually transmitted disease (14 cases); pregnancy, contraception and therapeutic abortion (8 cases). Twenty children presented with psychological or behavioural problems. These problems included a suicide attempt, ideation or drug overdose in nine patients and a variety of behavioural disorders in 11 children.

For 17 children, the presenting complaint included a miscellaneous group of symptoms and occurrences. Among them were: abdominal pain, nausea/vomiting, fainting, backache, pneumonia, asthma, visual impairment, hernia repair follow-up, burn and hepatitis. In all of these patients, at some point during their management by the hospital, the sexual abuse came to light.

In summary, of the 623 children presenting at hospital, for 553 (88.8 per cent) the initial complaint was of alleged sexual abuse, 4.8 per cent presented with alleged physical abuse or injuries or reproductive tract symptoms, 3.2 per cent with psychological or behavioural problems, and the remainder with an

assortment of other conditions. On the basis of the types of presenting complaints documented, there is a relatively low proportion of potentially hard to diagnose cases. These findings run counter to conventional professional wisdom which states that many, if not most, cases of child abuse must be unearthed by wary and conscientious professionals. Some possible sources of bias accounting for the survey's results may include that:

1. Cases of "hidden" sexual abuse among the paediatric caseload of these hospitals were not so diagnosed, and therefore, were not included.
2. Cases without a presenting label of alleged sexual abuse, rape or a similar diagnostic category were inadvertently excluded in the case selection process.
3. Since a high proportion of these cases was referred by professional services and agencies, these referral sources identified the reasons for the referrals and viewed the hospitals as the most appropriate treatment service to deal with all of the clinical and social ramifications of the sexual abuse.

## Physical Examinations

Of the 623 children, 526 (84.4 per cent) underwent a general physical examination immediately upon arrival in hospital. In addition, 413 had a gynaecological examination, 314 a more or less formal mental health assessment, 86 a social services' assessment and 52 a developmental assessment (these examination categories are not mutually exclusive). Some children had no examinations, and others had as many as three or four.

A general physical examination usually includes visual inspection, touching with hands (palpation) and the use of instruments to evaluate the condition of the entire body, with emphasis and more detail on the areas of concern. Ears, eyes, nose and throat, head, neck, chest, back, abdomen and extremities are normally all examined, and attention is paid to the internal organs, such as heart, lungs, liver, spleen, bowel and kidneys. On males, a complete physical should include at least a visual inspection of the penis, testicles, buttocks and anus, and a rectal examination with the finger, when indicated.

On female children, especially those not sexually active, inspection of the labia, hymenal opening, anus and buttocks would also usually be included in a general physical examination. However, if there were concern about rape, sexually transmitted disease or any genital or urinary tract trauma, a full pelvic examination, including speculum examination, internal examination (bimanual palpation) and the taking of cultures would be planned. The extent of the examination would depend on the age, size, maturity, prior sexual activity and present mental state of the child.

It is not possible to state the degree of completeness of the general physical examinations performed on the children about whom information was obtained in the National Hospital Survey. Many details of the examinations were not recorded in the questionnaires. Likewise, it is also not possible to

know whether the gynaecological assessment on girls was cursory or complete, or whether it was done as part of the general physical examination on some girls who were not specifically noted to have had a separate gynaecological assessment.

On the basis of the information available, it appears that these young patients received the following types of examinations immediately upon arrival in hospital.

Type of Examination	Males (n=74)		Females (n=549)	
	Number	Non. Accum. %	Number	Non. Accum. %
General physical	60	81.1	466	84.9
Pelvic/gynaecological	—	—	413	75.2
Mental health assessment	27	36.5	287	52.3
Social service assessment	12	16.2	74	13.5
Developmental assessment	7	9.5	45	8.2
Other (e.g., medicolegal, general interview, abortion or unspecified)	1	1.4	15	2.7
Laboratory tests	3	4.1	328	59.7

A general physical examination was performed on 526 children (84.4 per cent). Specific reasons were cited why 52 children had not received a general physical examination on arrival in hospital. Of these children, 27 had been examined previously or were to be transferred elsewhere, five refused examination, four demonstrated behavioural difficulties due to past sexual trauma and two did not come to hospital. In the latter instance, it was not known whether these children ever visited hospital at all, whether charts were opened on them as a result of a relative's visit or telephone call, or whether the child appeared once and did not reappear for an examination scheduled later. In nine cases, the examination was postponed and in three none was performed due to the time lapse between when the abuse had occurred and when the child had visited the hospital. For two children, no reason was specified. An additional 39 children were either not examined, or were examined, but there was no chart record of the examination.

Of the 526 children (466 girls, 60 boys) who underwent the general physical examination, 424 (80.6 per cent) were found to have no physical abnormalities, 373 females (80.0 per cent) and 51 males (85.0 per cent).



Reporting of Abnormalities	Males (n=60)		Females (n=466)	
	Number	Per Cent	Number	Per Cent
Abnormalities found	9	15.0	93	20.0
No abnormalities found/Not reported	51	85.0	373	80.0
TOTAL	60	100.0	466	100.0

Positive findings (not mutually exclusive) included: 106 occurrences of bruising, abrasions, scratches or welts; 14 lacerations; three bites; seven burns, including one cigarette burn; and one sprain. Five children demonstrated inflammation, chapped skin or tenderness in the chest area, and in 17 cases the findings were listed as "other" and not specified.

Abnormality/ies Found	Males	Females
	Non-Accumulative	
Bruising	6	64
Abrasions	1	16
Scratches	—	17
Lacerations	2	12
Burns	3	3
Bites	—	3
Cigarette burns	1	—
Welts	—	2
Sprains	—	1
Inflammation	—	1
Chapped skin around mouth	—	1
Tenderness around chest	1	2
Unspecified	1	16
TOTAL NUMBER OF ABNORMALITIES FOUND	15	138

## Gynaecological Examination

A gynaecological examination was carried out on 413 of 549 girls. For the remainder, no explanation was given for the lack of examination of 54 cases. (As noted previously, it is possible that inspection of the genitals, anus, perineum and buttocks had occurred as part of the general physical examination and was not recorded separately. This would most likely have been the case for the younger girls). Of the remaining 82 girls who had no gynaecological examination, in 36 cases this procedure had been postponed; in 13, it had already been performed by another physician; in 19, the examination was considered unnecessary; in six, the patient refused; in another six, the reason for no examination was the time elapsed between the event and the patient's arrival in hospital; and, finally, two patients did not come to hospital.

The component parts of the gynaecological examination varied considerably. Vaginal swabs were taken from 305 girls, vaginal washings were obtained from 79 and cervical swabs from 152. A bi-manual examination was performed on 191 of the female patients and a speculum examination on 193. Pregnancy tests were done on 104 of the girls and a V.D.R.L. on 294. Anal and rectal swabs were taken on 162 and 157, respectively.

The variation in the frequency with which the different examinations were undertaken may be partially accounted for by the ages of the girls and by the nature of the reported abuse. For example, speculum examination, bimanual examination and cervical culture might not be performed on prepubertal girls or on those who denied that vaginal penetration had occurred. It must also be remembered, that these examinations can be physically and/or psychologically traumatic for some girls, and that they should only be performed with good reason.

The findings on the gynaecological examination were as follows:

**Labia** — 250:

Normal appearance (150 not reported or not applicable). Among those examined and demonstrating pathology, there were the following signs (some children may have had more than one finding):

Laceration	10
Scratches or abrasions	18
Erythema or inflammation	29
Bleeding, bruising or hyperemia	16
Discharge	4
Adhesions	1
Small pimple, rash, infection or other	5
Total	83

**Hymen** — 239:

Normal appearance, including the following designations:

No signs fresh trauma	55
Intact	89
Tight or not lax	72
Normal	23
Total	239

The condition of the hymen was not noted for 135 girls and the examination was considered not applicable for 134.

*Pathology of the hymen* included:

Hyperemia, erythema	3
Tears, splits, lacerations	17
Bleeding	5
Edema	1
Old scars, adhesions/lacerations	3
Lacerations of introitus	1
Total	30

**Vagina — 185:**

Normal appearance: the condition of the vagina was not noted in 133 girls; the examination was considered non-applicable in 60, and was impossible for two girls due to pain.

Vaginal findings were difficult to interpret, since vaginal discharges, vaginitis, vulvitis and erythema are not uncommon findings, even in sexually inactive girls. However, they were reported by physicians as follows:

Discharge	95
Bleeding	18
Menstruating	8
Bruising	11
Inflammation (e.g., vulvitis, vaginitis)	5
Infection/warts	4
Larger than normal for age	2
Surgery re: lacerations	2
Erythema	7
Total	152

**Breasts (girls) — 180:**

Normal appearance: for 233, the condition of the breasts was not noted; for 58, it was considered non-applicable. In younger, pre-pubescent girls, the breast area may not have been specifically noted.

Pathological findings included:

Lacerations	1
Bruising	6
Burns	1
Scratches	1
Erythema	1
Other	3
Total	13

**Examination of Male Genitalia**

**Penis**

The condition of the penis was not noted on the chart or such examination was deemed inapplicable for 23 of the 74 boys. For 43 boys, the penis was found to be normal.

Pathological findings included:

Lacerations	1
Bruising	1
Inflammation	1
Infections	1
Pain	1
Erythema	1
Discharge	1
Total	7

**Testicles**

The condition of the testicles was not noted on the chart or such examination was deemed unnecessary for 26 boys. For 39 boys, the testicles were exam-



ined and found to be normal in appearance. There were two boys for whom palpation of the testicles was painful (no other pathology noted).

## Both Sexes — Examination of Perineum, Buttocks, Rectum and Anus

### Perineum

The condition of the perineum was deemed not applicable and/or not noted for 304 children and was found to be normal on examination of 212 (29 boys, 183 girls). Among the remaining children, the findings included:

<u>Condition</u>	<u>Males</u>	<u>Females</u>
Bleeding	—	7
Splits/tears	—	9
Inflammation or irritation	—	14
Infection	—	1
Bruising	—	4
Erythema	<u>1</u>	<u>25</u>
Total	1	60

In addition to the above conditions, seven children were found to demonstrate “poor hygiene” in the perineal area.

### Buttocks

The condition of the buttocks was considered not applicable and/or not noted for 372 children, and was found to be normal for a further 115. Other findings included:

<u>Condition</u>	<u>Males</u>	<u>Females</u>
Laceration	—	1
Bite	—	1
Scratches/abrasions	—	5
Bruising/erythema	4	7
Drawing on buttocks	<u>—</u>	<u>2</u>
Total	4	16

### Anus

The condition of the anus was not noted (or was considered inapplicable) for 340 children. It was considered to be normal for 163. Five children were found to have poor hygiene in the area and two males complained of pain on defecation. Other findings included:

<u>Condition</u>	<u>Males</u>	<u>Females</u>
Loose anal ring	2	1
Bleeding	1	2
Tears	1	3
Swelling	1	2
Inflammation	3	—
Spasm	—	1
Bruising/tenderness	<u>4</u>	<u>4</u>
Total	12	13

## Rectum

It is not known whether examination of the rectum included digital and/or visual examination. The report of "poor hygiene" in two cases suggests that positive response to rectal examination may have included those situations in which only inspection of the perineum and anus was carried out. The condition of the rectum was not noted or such examination was considered inapplicable in 373 cases, and the rectum was examined and found normal in 150. Positive findings included, in addition to two cases of "poor hygiene":

<u>Condition</u>	<u>Males</u>	<u>Females</u>
Inflammation	1	1
Lesion (unspecified)	1	1
Tear	—	1
Total	2	3

## Other Conditions

Other conditions thought to be present in the children included:

<u>Condition</u>	<u>Males</u>	<u>Females</u>
Genitourinary infection	—	20
Primary syphilis	1	1
Gonorrhea	—	12
Pregnancy	—	4
Suspected sexually transmitted disease	—	4
Pelvic Inflammatory Disease	—	1
Herpes Simplex type I	1	1
Vaginal warts	—	1
Unspecified	—	14
Total	2	58

## Physical Injuries and Harms

Of the children examined in hospital, about four in five had no abnormalities on general physical examination. Of those having positive findings, bruising, abrasions and scratches accounted for a majority of the conditions. The 14 children with lacerations and the seven with burns were the only ones with physical injuries that could be deemed medically serious, but for these cases, the extent of damage was not fully documented. Even assuming all of these children had been seriously injured, they represent less than one in 20 of those examined requiring significant medical attention.

Among the girls, three in four (75.2 per cent) underwent gynaecological examination. Of this group, 10 had labial lacerations, 22 had hymenal tears, 18 had vaginal bleeding (presumably non-menstrual), two had vaginal lacerations requiring surgery, one had a breast laceration and one a burn on the breast. Sixteen girls had perineal tears or bleeding, one had a laceration of the buttock, four had anal-rectal tears and 43 were thought possibly to have a sexually transmitted disease. In all, about a third of the presenting findings appear to

have required medical attention. (This may have been less than a third of girls, since some had more than one finding).

Among the boys, one had a penile laceration, one an infection of and one a discharge from the penis. One had an anal tear.

Under certain circumstances, admission as an inpatient to hospital might be considered as an indication of the severity of the physical injuries sustained by sexually assaulted children. Such admissions were made on behalf of one in 14 cases (7.1 per cent), but a review of the experience of these children suggests that in relation to the types of sexual acts committed against them and the physical injuries sustained, that they differed little in these respects from those children who had been treated as ambulatory outpatients.

A disproportionate number of the 44 patients admitted to hospital, in comparison to other patients in the survey, were older children. The ages of these children were:

<u>Age</u>	<u>Per Cent</u>
Under age 7	27.9
7-11 years	16.3
12-13 years	13.9
14 years and older	41.9

Of the 623 children presenting at hospital, 71.9 per cent had been victims of actual or attempted acts of vaginal or anal penetration. Of the children admitted as inpatients, 69.8 per cent had experienced acts of this kind. With regard to the types of physical injuries that they had sustained, about a third each had had none (30.2 per cent), some (37.2 per cent) or injuries which could be deemed serious (32.6 per cent).

It is noteworthy in this regard that two of the 11 hospitals accounted for more than half (55.8 per cent) of the children admitted as inpatients. The findings obtained in relation to whether sexually abused children were admitted as inpatients to hospital suggest that this action was often taken for custodial purposes, and in some instances, to permit further investigations.

On the basis of the medical charts reviewed in the National Hospital Survey, 20 of the children (17 girls, 3 boys) were noted as suffering "serious" general or gynaecological/genital injuries. This group represents 3.2 per cent of all of cases.

**From a medical standpoint, the most striking aspect of the physical findings is that most of the actual injuries sustained by the sexually abused children who were medically examined appear to be minimal. A small number of the children had lacerations, more had bruising, redness and inflammation, and only one in 14 was admitted to hospital, many for custodial purposes or for further investigation.** Supporting this conclusion were the results of a question in the survey which asked, in the opinion of the attending professional staff, whether the child had suffered any long-term physical harms as a result of the



sexual abuse. It was reported that about one in 42 children (2.4 per cent) in the judgment of these professionals fell into this category.

If the children with harms documented on the basis of the general physical examination are taken together — girls with gynaecological harms and boys with genital harms — then these total 143 children of the 623 patients presenting to hospital. In other words, on the basis of the medical examination of sexually assaulted children and youths, a maximum of about one in four (23.1 per cent) may have required medical attention, and in many instances, only physical injuries of a minor nature had been sustained or the care was required for conditions other than those related to the sexual abuse. These children were more likely to have suffered psychological and emotional harms, the findings presented next, than to have been victims of physical injuries.

## Mental State Examination

Many physicians, consciously or unconsciously, make an assessment of the mental state of their patients whenever patients are seen. If a patient's emotional, behavioural and thinking patterns appear to be within the normal range and are unchanged from previous visits, then no note may be made in the chart. However, if a patient was excessively depressed or elated, if his or her thinking patterns seemed bizarre, or if he or she demonstrated unusual behaviour, the physician would likely make a note in the chart or, at least, would tend to remember the abnormal pattern.

In the National Hospital Survey, several questions dealt with manifestations of the patient's mental state. One related to the observed behaviour and emotional state noted in the initial examination. This first examination may not have included a formal mental health assessment (e.g., patients coming to the emergency room), and hence, observations on the demeanour of the patient may have been recorded simply because they were noteworthy or because the presenting complaint (e.g., alleged sexual abuse) suggested the need for documentation of mental state. During the initial examination or on a subsequent visit to hospital, a mental health assessment may have been made either by the principal examiner or by means of referral of patients to other hospital services. Where information on these assessments was recorded, these findings were documented in the survey. Finally, information was sought in the survey about the emotional and behavioural reactions of children which were considered by attending staff to have resulted from sexual abuse. Reactions of this kind were judged not to have preceded the abuse and were attributable to it having occurred.

***Initial Impressions.*** It is difficult and highly subjective to attempt to classify children's behaviours or emotions as positive or negative, since, for example, a crying child might well be reacting more appropriately in a stressful situation than one gaily chatting who is suppressing fear or anger.

Table 31.2

**Initial Impressions of Physicians of  
Sexually Abused Children: *Behavioural* Reactions**

Initial Clinical Impressions of Behavioural Reactions	Males (n = 74)		Females (n = 549)	
	No.	Non-Accum. %	No.	Non-Accum. %
<i>Distressed/Unco-operative</i>	8	10.8	161	29.3
• crying, sobbing, weeping	1		52	
• fidgeting, pacing, nervous	2		28	
• recoiled, flinching, shy	4		41	
• fearful, resisted examination	1		40	
<i>Neutral/Passive</i>	12	16.2	79	14.4
• no visible reaction	6		19	
• silent, apathetic	6		60	
<i>Not Distressed/Co-operative</i>	45	60.8	279	50.8
• alert, active, lucid	19		104	
• body relaxed	3		30	
• smiling, humming	5		25	
• outgoing, talkative	9		40	
• talked freely about abuse	9		80	

National Hospital Survey

Table 31.3

**Initial Impressions of Physicians of  
Sexually Abused Children: *Emotional* Reactions**

Initial Clinical Impressions of Emotional Reactions	Males (n = 74)		Females (n = 549)	
	No.	Non-Accum. %	No.	Non-Accum. %
<i>Distressed/Unco-operative</i>	18	24.3	250	45.5
• angry	—		10	
• hysterical, demanding	—		8	
• irrational, confused	1		5	
• depressed, worried	3		42	
• reluctant to discuss	7		66	
• distressed, upset	4		80	
• frightened	3		39	
<i>Neutral/Passive</i>	2	2.7	28	5.1
• didn't think it abuse	—		13	
• flip, embarrassed	2		15	
<i>Not Distressed/Co-operative</i>	61	82.4	310	56.4
• calm, composed	18		86	
• cheerful, happy	12		47	
• co-operative	18		115	
• responsive, related well	13		62	

National Hospital Survey

Notwithstanding this observation, it is valuable to note how these children presented themselves, since certain behaviours may eventually turn out to be prognostic indicators. The behavioural and emotional presentation of the children is divided into: distressed/unco-operative; neutral/passive; and not distressed/co-operative. These findings noted by the principal examiner are listed in Tables 31.2 and 31.3.

Lacking a control group, for instance, having findings about the customary demeanour of children coming to emergency services, it is unknown whether the reported reactions of sexually abused patients were usual or markedly different from those of other children. The findings indicate somewhat different reactions by males than by females, with considerably more of the latter being distressed or unco-operative in both behavioural and emotional reactions.

**Typologies have sometimes been developed which list the reactions said to be characteristic of children who have been sexually abused. The survey's findings in relation to the initial impressions of attending examiners reveal that there was no stereotypic demeanour presented by victims. On the contrary, the findings clearly show a full range of behaviours and emotions, from children who were very distressed to those who were apparently composed and happy.**

*Case Studies.* Before presenting the statistical findings obtained in relation to the mental state assessment of sexually abused children, a number of case studies are given which show the types of harm attributable to offences of this kind. The excerpts were taken from the notes in patients' charts made by attending professional health workers.

*Case Study 1.* Two year-old boy who experienced attempted anal intercourse by a male babysitter. Attending professional's comment: "It is unlikely that this child will have any long-term effect as a result of this incident by itself — but if the mother continues to remain anxious and under distress, the child may eventually react to the mother's extreme over-protectiveness."

*Case Study 2.* Three year-old boy who experienced anal intercourse by an unknown male. Social worker's comment: "Patient's behaviour has changed for the worse since the time of the assault: temper tantrums, angry testing episodes, difficult to manage, encopresis, wild behavioural misconduct."

*Case Study 3.* Three year-old girl who was the victim of thigh intercourse, oral-anal contact and an object inserted in her vagina by a family friend. Psychiatrist's comment: "Since sexual abuse, child fondles mother's male friends and is involved in bestiality, bizarre dreams and tantrums."

*Case Study 4.* Six year-old boy sexually fondled by father. Attending professional's comment: "Will require long-term counselling".

*Case Study 5.* Six year-old girl sexually fondled by uncle. Attending professional's comment: "Serious emotional aftermath; preoccupation with sex; severe anxiety."

*Case Study 6.* Seven year-old girl sexually fondled by father. Attending professional's comment: "Fear that court order (two years probation and no visiting rights) and sexual abuse had forced her to give up hope of ever having a relationship with her dad . . . fear of abandonment by mother now that she had lost her father."



*Case Study 7.* Nine year-old girl, victim of thigh intercourse, attempted rape and vaginal penetration by a finger by a neighbour. Social worker's comment: "Patient now exhibits difficulty sleeping and preoccupation with incident."

*Case Study 8.* Nine year-old girl raped by adoptive father, grandfather and her two brothers. Psychiatrist's comment: "Patient does not know how to approach male adults in any other way than in a fashion which would be considered to be very seductive. Patient sexualizes all relationships with males, has disturbing dreams and would like to go home to adoptive parents, but is simultaneously fearful of them. She will require long-term sexual psychiatric treatment".

*Case Study 9.* Nine year-old girl, victim of a finger penetration in her vagina. Social worker's comment: "A psychological trauma is anticipated, even if the patient has adequate parenting. She is afraid of being alone, of the dark and perhaps in the future, of men."

*Case Study 10.* 10 year-old girl whose genitals were fondled by a family friend. Social worker's comment: "Patient is now suffering from anxiety, sleeplessness, separation anxiety and nightmares."

*Case Study 11.* 10 year-old girl, finger penetration of vagina by her stepfather. Paediatrician's comment: "Patient panics when left alone or is in a crowd; she believes everyone knows she was involved with incest; has been eating compulsively; provocative to peer group males; phobia of older men."

*Case Study 12.* 11 year-old girl who was tied up and forced to witness a friend being raped by a stranger. Psychiatrist's comment: "Patient became a compulsive eater (30 plus pounds in three months). At one point, she stated that she was only staying alive for her mom and dad's sake. Mother states that child has feelings of lack of self-worth. Child is scared at night of someone breaking into the house. She feels down most of the time; there is no fluctuation in this. She thinks she would be better off dead because she wouldn't have to deal with troubles. All in all, a very depressed, angry little girl."

*Case Study 13.* 11 year-old girl raped by her stepfather. Attending professional's comment: "Lost interest in school work and activities she used to enjoy; withdrawal; severe depression."

*Case Study 14.* 11 year-old girl sexually fondled by her father. Attending professional's comment: "Guilt because father is on probation; depression; sexual preoccupation."

*Case Study 15.* 11 year-old boy, anal intercourse and fellatio by foster father. Attending professional's comment: "Problems at school; personality disorder."

*Case Study 16.* 11 year-old boy, anal intercourse by friend's father. Attending professional's comment: "Fear of adult males; questions his own sexuality."

*Case Study 17.* 12 year-old girl, raped by foster father. Attending professional's comment: "Danger of sexual abuse, promiscuity and prostitution; preoccupation with sex."

*Case Study 18.* 12 year-old girl, genitals fondled by mother's common-law partner. Social worker's comment: "Sexual acting-out; very low self-esteem; negative behaviour; harming herself. This, plus her whole family turning against her, has led to a very disruptive life for a 12 year-old girl."

*Case Study 19.* 13 year-old girl, sexually fondled by her father. Attending professional's comment: "Long-term emotional and social problems because the family don't believe her."

*Case Study 20.* 13 year-old girl, fellatio and attempted rape by her step-father. Attending professional's comment: "Attempted suicide; drug use; guilt."

*Case Study 21.* 13 year-old girl, was raped by her uncle, became pregnant and had an abortion. Attending professional's comment: "Guilt about rape and aborting baby; will need long-term one-to-one therapy."

*Case Study 22.* 13 year-old girl, sexually molested by her mother, had intercourse with mother's common-law partner. Attending professional's comment: "Attempted suicide; severe depression; withdrawal."

*Case Study 23.* 14 year-old girl, raped by her father. Attending professional's comment: "Depression; guilt re sexual abuse; will require ongoing intervention in the family situation as well as psychotherapy."

*Case Study 24.* 14 year-old boy, victim of anal intercourse by mother's common-law partner. Attending professional's comment: "Preoccupation with sex; attempted bestiality."

*Case Study 25.* 15 year-old girl, raped by her father. Attending professional's comment: "Patient feels guilty: 'If I didn't tell anyone, no one would ever know and my father would be in no trouble'."

*Case Study 26.* 15 year-old girl, sexually fondled by her mother's common-law partner. Social worker's comment: "Patient experiences concerns about her own sexuality and an 'emotional deadening' towards males her own age; tends to overeat. Feels she has few friends, partly through choice, because she does not 'trust' people."

*Case Study 27.* 15 year-old girl, raped and forced to commit fellatio by five unknown males. Attending professional's comment: "This young girl's total behaviour — home, school, family and peer group disintegrated after incident. If no proper psychotherapy follow-up, prognosis bad."

*Case Study 28.* 15 year-old girl, sexually molested by uncle. Attending professional's comment: "Suicidal; negative social behaviour."

*Case Study 29.* 15 year-old girl, raped by her uncle and her mother's common-law partner. Attending professional's account: "Long-term problems; tried to harm herself with a knife; very anxious."

*Case Study 30.* 16 year-old girl, raped when she was age 11 by three cousins. Social worker's comment: "Emotional, developmental and social growth affected . . . has become involved in negative behaviour i.e., sexual promiscuity, drug abuse. Self-image is poor—sees herself as a sexual object that has been abused. High need for intimacy which patient has not been able to meet in a satisfying way therefore causing lack of trust in people and in herself."

*Case Study 31.* 17 year-old girl, raped by her father when she was age 13. Psychologist's comment: "Patient needing intense counselling and support during this period to help her work through her feelings. Patient stated she felt like a prostitute at times, has had thoughts of killing herself, and portrays a very low self-esteem."

The case studies provide deeply personal dimensions to the summary statistics about the types of emotional and behavioural problems experienced by children who have been sexually abused. It is evident, even in children as young as two or three years-old, that there can be major behavioural changes and symptoms of severe psychological distress. The manifestations of distress can be general — anger, tantrums, nightmares or sexually oriented, such as the three year-old girl who fondled her mother's male friends.

Another clinically important point illustrated by the case studies is that fondling and other acts which might be considered less traumatic than vaginal and anal intercourse, can cause significant levels of disturbance in the child. For almost all of the very young children, the attending health professionals allude either to the need for long-term therapy or they describe symptoms that seem serious and that are unlikely to be resolved quickly or without assistance for the child and family.

The case studies for slightly older children, those between ages 10 and 12, demonstrate a multifaceted psychopathology. Depression in its various manifestations occurs often. Harm to self and suicidal thoughts become more obvious in this age group, as do preoccupation with sex and sexual acting out. Among some of the girls, compulsive eating became a compensating behaviour. For children in this age group, the excerpts from the patients' charts indicate that the emotional and psychological harms were serious and, in some instances, would require a significant amount of treatment.

A number of different reactions become evident when the experience of adolescent victims is considered. These adolescent girls seem to feel and express guilt, shame and a loss of self-worth. Depressive symptoms were evident and there were suicide attempts as well as drug use. Particularly poignant is the verbalization of a loss of trust. Several of the girls expressed fear of men, but two at least seemed to have lost the ability to trust friends or persons in general. The sense of betrayal emanates from their comments. Doubts about sexuality, fear of the opposite sex and lack of trust combined would suggest that disturbed sexual relationships later in life may be an outcome for some of these sexually abused children.

## Mental State Assessment

A mental state assessment of a sexually abused child may have been made in the course of the initial presentation, have been done then and followed later by a fuller assessment, or no such examination may have been provided. During the pretest stage of the National Hospital Survey, it was realized that in some instances, patients' charts were incomplete in relation to certain types of information being sought. Where this occurred, an attempt was made to seek missing information from members of the professional staff who had attended or had known about these patients.



On the basis of the findings obtained in the survey, it was found that 60.8 per cent of the males and 70.3 per cent of the females who had been sexually abused were reported to have had some form of mental assessment during their initial presentation to hospital or during the first scheduled follow-up visit. No information was reported concerning such assessments for two in five male victims (39.2 per cent) or for about one in three female victims (29.7 per cent). Of the 431 children for whom such information was recorded, the mental state assessment had been given for 304 (70.5 per cent) during their initial presentation to hospital.

**Table 31.4**  
**Examining Professional's Impressions of**  
**Mental State of Sexually Abused Children**

Findings of Mental State Examination	Males (n = 74)		Females (n = 549)	
	No.	Non-Accum. %	No.	Non-Accum. %
<i>Distressed/Unco-operative</i>	11	14.9	165	30.1
• depressed, worried	2		53	
• distressed, crying, tense	7		82	
• reluctant, negative, frightened	1		26	
• hysterical, irrational	1		4	
<i>Neutral/Passive</i>	1	1.4	3	0.5
• no visible reaction	1		3	
<i>Not Distressed/Co-operative</i>	22	29.7	177	32.2
• calm, sensible, relaxed	17		142	
• cheerful, happy, attentive	5		35	
<i>Other Reactions</i>	19	25.7	145	26.4
• hyperactive, fidgeting nervous	6		39	
• immature, flip, nervous	3		27	
• personality disorder (behavioural problem, neurotic, psychotic)	5		21	
• retarded, inarticulate	4		27	
• other	1		31	
<i>No Report of Mental Health Examination</i>	29	39.2	163	29.7

*National Hospital Survey*

The findings of these assessments (Table 31.4) are generally comparable to those noted in the initial impressions of the professional staff who had examined these patients. On the basis of these assessments, it was found that sexually abused children displayed a wide range of emotional and behavioural reactions and that girls were about twice as likely as boys to have been distressed or unco-operative. About a third of the children of both sexes were reported to have shown no visible distress.

Provision of Mental State Assessment	Males		Females	
	No.	Per Cent	No.	Per Cent
Physician at time of initial presentation	29	39.2	275	50.1
Psychiatrist	2	2.7	33	6.0
Psychologist	4	5.4	22	4.0
Medical social worker	1	1.3	25	4.5
Admitting nurse	7	9.5	24	4.4
Other professionals	2	2.7	7	1.3
No report of assessment given	29	39.2	163	29.7
TOTAL	74	100.0	549	100.0

In considering these findings, it is unknown how many of the children’s reactions are attributable to sexual abuse, to how they may comport themselves in hospital, to their previous experience with physicians and hospital personnel, or to their general behavioural patterns irrespective of these considerations.

### Psychological and Emotional After-effects of Sexual Abuse

Information was obtained in the survey about the reported psychological and emotional after-effects to children of sexual abuse. In all, a total of 985 psychological and behavioural reactions was recorded which in the judgment of the attending staff were considered to have resulted from (and post-dated) the sexual abuse (Table 31.5). This is a huge pathological load. The most frequently reported reactions included: insomnia, nightmares, and fears of going to bed alone; general school problems; angry outbursts, running away; fear, anxiety, guilt and embarrassment, and depression.

Psychological and Behavioural Reactions Following Sexual Abuse	Males (n=74)		Females (n=549)	
	No.	%	No.	%
None, not reported	34	46.0	281	51.2
One or more signs	40	54.0	268	48.8
Judged by professional examiners to be long-term harms	14	18.9	97	17.6

For one in two children (50.6 per cent), no psychological and behavioural consequences attributable to sexual abuse were reported. Of those for whom these reactions were recorded, on average, female patients had 3.4 and boys had 2.1.

In the judgment of attending hospital staff, about one in six (17.8 per cent) sexually abused children was considered potentially to have suffered long-term emotional and/or behavioural harm. The proportions were comparable for male (18.9 per cent) and female victims (17.6 per cent). These findings contrast sharply with the proportion of children requiring medical attention for various physical ailments (23.1 per cent) and the number who were considered to have suffered long-term physical harms (2.4 per cent) resulting from sexual abuse.

**Table 31.5**  
**Psychological and Social Behaviour Exhibited by**  
**Patients Following Sexual Abuse**

Psychological and Social Behaviour Exhibited Following Sexual Abuse	Males (n = 74)		Females (n = 549)	
	No.	Non-Accum. %	No.	Non-Accum. %
None, not reported	34	46.0	281	51.2
Irritability	5	6.8	31	5.6
Unnecessary, persistent fears	5	6.8	70	12.8
Anxiety	1	1.4	3	0.5
Angry outbursts	7	9.5	38	6.9
Guilt	—	—	2	0.4
Excessive dependency	3	4.1	30	5.5
General depression	2	2.7	49	8.9
Enuresis	2	2.7	18	3.3
Encopresis	1	1.4	1	0.2
Anuresis	—	—	1	0.2
Dysuria	—	—	1	0.2
Thumbsucking, nailbiting	—	—	8	1.5
Withdrawal	2	2.7	44	8.0
Lack of motivation for play	2	2.7	11	2.0
Less verbal communication	1	1.4	25	4.6
More verbal	—	—	1	0.2
Change in behaviour with peers at school	5	6.8	38	6.9
Truancy, chronic absenteeism	—	—	21	3.8
Lack of interest in school	2	2.7	40	7.3



Table 31.5 (continued . . .)

**Psychological and Social Behaviour Exhibited by Patients Following Sexual Abuse**

Psychological and Social Behaviour Exhibited Following Sexual Abuse	Males (n=74)		Females (n=549)	
	No.	Non-Accum. %	No.	Non-Accum. %
Preoccupation with abuse	5	6.8	39	7.1
Disturbed sleep pattern	5	6.8	65	11.8
Fear of going to bed alone	—	—	12	2.2
Nightmares	6	8.1	66	12.0
Loss of appetite	1	1.4	23	4.2
Vomiting	—	—	12	2.2
Nausea	—	—	13	2.4
Overeating	—	—	10	1.8
Heightened embarrassment/disgust	1	1.4	7	1.3
Difficulty completing routine tasks	2	2.7	11	2.0
Acting out, running away	6	8.1	34	6.2
School failure	2	2.7	16	2.9
Unusual sexual behaviour	4	5.4	24	4.4
Masturbating	—	—	1	0.2
Transvestite	1	1.4	—	—
Questions of sexual behaviour	3	4.1	19	3.5
Fear of pregnancy	—	—	14	2.6
Fear of venereal disease	—	—	4	0.7
Suicidal behaviour	2	2.7	23	4.2
Drug, alcohol use	1	1.4	22	2.0
Other	6	8.1	72	13.1

*National Hospital Survey*

Although the clinical information about the mental health state of sexually abused children following these incidents was not documented for all children in the survey, there can be no doubt that **the main findings are that substantially more children were found to have been emotionally harmed than had been physically injured, and that proportionately, long-term emotional harms were over six times as likely as long-term physical injuries to be consequences of child sexual abuse.** While the survey's findings on the mental state of sexually abused children are incomplete in relation to information obtained from

the initial impressions of professional health examiners and the mental state assessments made during or shortly after the child's initial presentation to hospital, the emotional and psychological needs of the children were clearly recognized by attending hospital staff. Follow-up care was recommended for about nine in 10 patients (88.1 per cent), and for most of them, referrals were made for mental health assessment, social work assessment and counselling.

## Hospital Management of the Patient

The hospital management of the patient begins with his or her first presentation in person (occasionally by telephone) and continues until final discharge. Discharge may not mean the end of care, merely that any further management is not under the aegis of the hospital itself. For example, some patients may be referred to physicians or other health personnel not affiliated with the hospital.

### Referrals to Hospital

In Chapter 7, *Dimensions of Sexual Assault*, a summary is given of children referred to different public services. In the National Hospital Survey, it was found that slightly over half of the sexually abused children examined at the hospitals surveyed were referred by a professional individual or an agency. About two in five of the hospital visits were initiated by the families or friends of victims.

### Hospital Service First Seeing Patient

A majority of child abuse victims were initially seen in the emergency room. There were no reports about the initial service provided for seven children (six girls, one boy). A total of 406 children (65.2 per cent) was first seen in the emergency room; this group included 361 girls and 45 boys.

Why was the emergency room the initial service turned to by so many sexually abused victims? Was it by chance or by choice? The hustle and bustle of the typical emergency department appear to make it the least appropriate service in a hospital to provide optimal care to a victim of child sexual abuse. Several factors may account for the high level of use of this department.

Although patients arriving at the emergency department in most large hospitals are asked by a clerk or nurse what their problem is, information about sexual abuse may have been withheld by the patient (or accompanying individual) until she or he was alone with the medical examiner. In some cases, the patient may have named another related or unrelated problem, for example, bruising or vaginal discharge in order to avoid a discussion of sexual abuse until meeting the doctor. Another possibility is that since most hospital clinics

Table 31.6

## Hospital Service by Patients Initially Attended

Service	Males		Females	
	No.	%	No.	%
Emergency Room	45	60.8	361	65.7
Gynaecology	1	1.4	35	6.4
Family Medicine	2	2.7	4	0.7
Medical Outpatient/ Ambulatory Services	8	10.8	19	3.5
Medical Social Service/ Social Work	2	2.7	16	2.9
Paediatric Service	2	2.7	28	5.1
Psychiatry	2	2.7	11	2.0
Teen/Adolescent Clinic	2	2.7	28	5.1
Child Protection/ Abuse Team	1	1.4	18	3.3
Sexual Abuse Team	8	10.8	18	3.3
Developmental Clinic	—	—	1	0.2
Children's Clinic	—	—	4	0.7
Not reported	1	1.4	6	1.1
TOTAL	74	100.1*	549	100.0

*National Hospital Survey.* Charts were opened for two patients not presenting at hospital.

\*Rounding error

and physicians schedule their work during the day, if patients arrived outside of these normal working hours, the emergency room might be the only place where treatment was available. For the 621 patients who presented to hospitals (two did not), there was information on the arrival time of 448. Sixty-three patients arrived between midnight and 8.00 a.m., another five between 8.00 and 9.00 a.m., 198 between 9.00 a.m. and 5.00 p.m., 23 between 5.00 and 6.00 p.m., and 159 between 6.00 p.m. and midnight. Thus, while 226 children appeared in hospital between 8.00 a.m. and 6.00 p.m., an almost equal number, 222, arrived outside normal working hours.

In addition to these considerations, a sizeable number of referrals were made by professional workers. It is possible that they may have made inappropriate follow-up arrangements for the children, that it was deemed the child needed prompt medical attention, or that the visit was scheduled to obtain forensic evidence. The findings show clearly, however, that it was not the special child abuse or child sexual abuse programs, where such programs had been established, to which most of the patients initially presented themselves.

Of the children first seen by departments other than the emergency service, 36 were seen by the gynaecology service (35 girls and one boy — the boy



for reasons not explained), 30 in teen or adolescent clinics, 30 in the paediatric clinic, 27 in the medical outpatient or ambulatory care service, 26 by the sexual abuse team, 19 by the child protection or abuse team, 18 by the social service/social work department, and the remainder by family medicine, psychiatry, developmental or children's clinics. In general, with the predictable exception of the gynaecology service, the proportions of boys and girls seen in the various services were similar; the exceptions were that 10.8 per cent of boys compared to 3.5 per cent of girls were seen in medical outpatient and ambulatory services, and 10.8 per cent of boys, but only 3.3 per cent of girls were seen first by the sexual abuse team.

## Principal Staff Member Conducting Initial Examination

The principal staff member conducting the initial examination was the emergency room physician in 206 cases, the paediatric resident in 109, the sexual abuse team or a member of it in 82, the child abuse team in 55 cases, a paediatrician in 60 cases, and a gynaecologist in 31 cases.

**Table 31.7**  
**Principal Staff Member Conducting Examination**

Staff Member Conducting Examination	Males		Females	
	No.	Per Cent	No.	Per Cent
Child Protection Abuse Team	1	1.4	12	2.2
Sexual Abuse Team	1	1.4	8	1.5
Member of Child Protection/ Abuse Team	4	5.4	38	6.9
Member of Sexual Abuse Team	10	13.5	63	11.5
Emergency Room Physician	19	25.6	187	34.1
Family Practice Resident	1	1.4	7	1.3
Gynaecologist	—	—	31	5.6
Medical Social Worker	1	1.4	10	1.8
Paediatrician	12	16.2	48	8.7
Paediatric Resident	18	24.3	91	16.6
Psychiatrist	2	2.7	17	3.1
Gynaecology Resident	—	—	7	1.3
Pathologist	2	2.7	11	2.0
Other	2	2.7	9	1.6
Not reported, inapplicable	1	1.4	10	1.8
<b>TOTAL</b>	<b>74</b>	<b>100.1*</b>	<b>549</b>	<b>100.0</b>

*National Hospital Survey.*

\*Rounding error

The sex of the principal examining staff member was ascertained and reported for 390 children. Among the 43 boys for whom this was known, 27 (62.8 per cent) were examined by male staff, 15 (34.9 per cent) by female staff and one by both. Of the 347 girls, 178, or just about half (51.3 per cent) were examined by male attending staff. Whether the child had an adverse reaction to the sex of the staff member was reported only in 177 cases. Of these, 14 children were recorded as having had an adverse reaction; 163 did not. The 14 were all girls; the examining physician was male in 11 cases, female in two and not reported in one. (With no reports for 446 cases, the significance of findings for 14 of 163 cases is questionable). Seven girls requested another physician.

## Termination of Care After Initial Presentation

For 17 patients (six males, 11 females), hospital care was terminated by attending staff immediately following discovery of sexual abuse. The reasons noted were: further care was not recommended (3); the patient refused care (3); the patient's family refused care (1); the patient didn't come to hospital (1); the patient was referred to external agency (6); the patient didn't keep the appointment (2); and the police had arrested the offender (1).

## Follow-up Care

In view of the complexity of the possible harms resulting from child sexual abuse, it is clear that some fairly extensive examinations should optimally be performed upon the victim. These would minimally include a general physical examination, gynaecological examination, where appropriate, developmental assessment, mental health assessment, family assessment, and possibly others, such as indicated laboratory tests, intelligence tests and forensic tests. Since most of the children first presented in the emergency service, it would be expected that a large number of referrals would be made to other services and that these would result in a significant number of follow-up visits.

This was, in fact, the case. Of the 592 children (95.0 per cent) for whom information was available, further medical and/or psychosocial follow-up within the hospital was recommended for 549 (92.7 per cent). The proportion for girls was slightly higher than that for boys which likely reflects the need for a detailed gynaecological assessment for many of the girls.

Recommended Follow-up Care	Males (n=74)		Females (n=549)	
	No.	%	No.	%
Medical/psychosocial follow-up	63	85.1	486	88.5
No follow-up recommended	8	10.8	35	6.4
Not reported, inapplicable	3	4.1	28	5.1

A recommendation that further assessment and care are needed does not ensure that such follow-up will occur or that if no recommendation is made that additional care will be sought. However, among the children surveyed, compliance, at least initially, appeared to be the rule. Of the 549 children for whom follow-up was recommended, information was available for 544, and of these, nine in 10 (89.9 per cent) obtained at least some of the recommended follow-up care.

Patients Receiving Recommended Follow-up Care	Males (n=63)		Females (n=486)	
	No.	%	No.	%
Within hospital	20	31.8	223	45.9
External source	14	22.2	58	11.9
Hospital and external source	23	36.5	151	31.1
None, not reported	6	9.5	54	11.1

## Reasons for Follow-up Care

A total of 762 medical and psychological reasons were given concerning the need for the follow-up of 549 children for whom such care had been recommended. Most of the reasons given indicated the need for further assessment, of which over seven in 10 reasons indicated the need for psychosocial evaluation or counselling of the child (Table 31.8). The reasons for follow-up reflect the concerns of the initial examiner. It is likely that in the actual follow-up assessment and provision of care, further recommendations would reflect subsequent findings and the child's and family's progress.

It was recommended that seven boys and 17 girls should be followed up for investigation of sexually transmitted disease. Vaginal swabs were obtained from 305 girls and cervical swabs from 152. While 28 of these young patients (26 girls and two boys) were given a prophylactic medication, no information was listed in the hospital charts concerning whether these were 'confirmed' cases of sexually transmitted disease.

For patients for whom counselling was recommended by the initial examiner (for 248 girls and 36 boys), in some instances a notation was made either of the kind of counsellor being suggested, or of the kind of counselling desired. When the counsellor (or counselling agency) was specified, it was the hospital's abuse team in 80 cases, the child protection agency in 73, a social worker in 38, psychiatrist/psychologist in 38, and a child or adolescent clinic in 33. The types of counselling recommended were: family counselling, 28 cases; counselling in sexuality, sex abuse trauma/rape or birth control, 30 cases; and supportive counselling of parents or victim, 12 cases.



**Table 31.8**

**Reasons Given by Attending Staff for Medical and Psychosocial Follow-up of Sexually Abused Children**

Reasons Given for Follow-up	Males (n=63)		Females (n=486)	
	No.	Non-Accum. %	No.	Non-Accum. %
Repair of tears, lacerations	—	—	5	1.3
Abortion	—	—	2	0.4
Sexually transmitted disease	7	11.1	17	3.5
Pregnancy test	—	—	10	2.1
Gynaecological examination	2	3.2	108	22.2
Laboratory tests	2	3.2	27	5.6
Mental health assessment	6	9.5	59	12.1
Social work assessment	23	36.5	210	43.2
Counselling	36	57.1	248	51.0

*National Hospital Survey.* The gynaecological examination of two males is presumed to be in relation to more extensive examination of genitalia and anus/rectum than that provided on the initial examination.

For two in five (38.8 per cent) children, more than one follow-up service was recommended; this occurred twice as often for girls (41.2 per cent) as for boys (20.6 per cent). It is possible that this difference is accounted for by the initial impressions of physicians who had noted that a higher proportion of girls than boys had displayed symptoms of distress.

**External Follow-up Care**

Of the 246 children (209 girls and 37 boys) known to have received some of their follow-up care from an external service, the largest single group received that care from a child protection agency (172 cases). The instances of external aid also included: 38 children seen at a social service centre or by a social worker who had previously known the child; 26 seen at another hospital; 12 at a private clinic; 12 by the family physician; and 10 in a group home setting.

Almost half (45.5 per cent) of the reasons cited for recommending that external assistance be provided to children were made to meet legal requirements (e.g., requests by the police, child protection service, court). In a number of other instances, care had been initiated elsewhere, or the source of assistance was closer to the patient's home. In only two in five instances (41.5 per cent) was the source of external care otherwise initiated by hospital staff, i.e., a majority of the external assistance was recommended in order to meet legal requirements, to serve the convenience of patients, or because care had

been previously initiated by another agency. Of the 549 children for whom follow-up care was recommended, only one in five (18.6 per cent) received external assistance that was purposively sought out by hospital staff.

Sources of External Care	Males (n=37)		Females (n=209)	
	No.	Non-Accum. %	No.	Non-Accum. %
Child protection service	27	73.0	145	69.4
Social service/previous social worker	6	16.2	32	15.3
Other hospital	4	10.8	22	10.5
Private clinic	3	8.1	9	4.3
Family physician	2	5.4	10	4.8
Group home	—	—	10	4.8
School social worker/ worker/counsellor	1	2.7	6	2.9
Public health nurse	—	—	4	1.9
Other	—	—	5	2.4

### In-hospital Follow-up Care

Of the 549 sexually abused patients for whom follow-up care was recommended, three in four (76.0 per cent) received some or all of their care from the hospitals participating in the survey. Such care was received from a multiplicity of providers, with many children being seen by the staff of more than one service, department or facility. The 417 children who were in some way involved with the hospital for follow-up obtained their care, on average from two services, departments or facilities (2.0).

In-hospital Follow-up Services	Males (n=43)		Females (n=374)	
	No.	Non-Accum. %	No.	Non-Accum. %
Social Service Department	17	39.5	170	45.5
Sexual Abuse Team	22	51.2	152	40.6
Child Protection/Abuse Team	21	48.8	144	38.5
Teen/Adolescent Clinic	4	9.3	113	30.2
Gynaecology	1	2.3	89	24.8
Psychiatry/Psychology	6	14.0	45	12.0
Paediatric Service	3	7.0	16	4.3
Nephrology/Urology	1	2.3	10	2.7
Other (emergency room, family medicine, infectious ward, pre-natal clinic, medical outpatient)	4	9.3	22	5.9

Of the children who received outpatient follow-up care in hospital, reports on visits were available for 393. Of these children, 272 (69.2 per cent) made one or two visits each. Another 74 children (18.8 per cent) were seen between three and five times each and 34 had between six and nine visits. Thirteen children were seen at the hospital between 10 and 61 times, suggesting that intensive therapy had been provided.

For most of the physical injuries sustained by the children, redness, swelling, abrasions, bruising and so forth, one or two visits to the hospital would likely suffice to provide adequate care. Testing for the treatment of sexually transmitted diseases might have involved three or four visits. If the child originally presented in the emergency room, arranging gynaecological and psychosocial assessments could itself have involved another one to several visits. For a child involved in incest, or sustaining long-term recurrent abuse, supportive counselling, family therapy and/or individual psychotherapy may be warranted over a period of several months or even years.

## Termination of Contact with Hospital

At the end of the period of a year and a half for which findings concerning sexually abused children were obtained in the National Hospital Survey, about one in five patients (18.3 per cent) was still receiving care or services from hospital personnel. Of the four in five children (81.7 per cent) for whom hospital services had been terminated, one in five closures had resulted from a decision made by a patient and his or her family, or the patient's family had moved elsewhere. Patient or family -initiated decisions to terminate receiving hospital services were twice as likely to have been made for female than for male patients. In about one in five cases, the decision to terminate services provided by hospital staff was made either by child protection services or a physician in community practice.

## Summary

On the basis of the findings of the National Hospital Survey, it is concluded that:

1. About one in four (23.1 per cent) sexually abused children presented to the hospitals surveyed required medical attention for physical injuries or conditions (not all of which were attributable to sexual abuse).
2. In the judgment of the examining physicians, 2.4 per cent of these patients sustained physical injuries representing long-term harms. The majority of the children were adjudged not to have been physically injured by the sexual abuse, and of those who had been physically harmed, most of the injuries sustained were of a minor nature.
3. On the basis of the mental state assessment of the children, it was found that half (49.4 per cent) had suffered one or more emotional and behavi-



**Table 31.9**  
**Termination of Hospital Services for Sexually Abused Children**

Status of Case When Survey Conducted	Males		Females	
	No.	%	No.	%
Patient still receiving services	8	10.8	106	19.3
Case closed	66	89.2	443	80.7
Total	74	100.0	549	100.0
<i>Reason Case Closed</i>				
Patient wished no more care (includes patients not reached by hospital, those who did not keep appointments, etc.)	3	4.0	56	10.2
Patients' parents wished no further care (includes prefer other source of care, etc.)	6	8.1	57	10.4
Review of case by hospital protection/ abuse team	11	14.9	39	7.1
Review of case by hospital sexual abuse team	9	12.2	34	6.2
Decision alone of primary examiner (e.g., M.D., social worker)	9	12.2	50	9.1
Decision of primary examiner in consultation with other hospital staff	4	5.4	34	6.2
Child Protection Agency doing follow-up care	6	8.1	66	12.0
Family physician, other hospital or agency doing follow-up	6	8.1	35	6.4
Care no longer necessary — child no longer at risk or considered well	6	8.1	48	8.7
Family moved	—	—	15	2.7
Not reported	6	8.1	9	1.6
TOTAL	66	89.2	443	80.6*

*National Hospital Survey.*

\*rounding error.

oural harms resulting from sexual abuse. In the judgment of the attending professional health workers, about one in six children (17.8 per cent) potentially sustained long-term emotional or behavioural harm attributable to sexual abuse.

4. A majority of sexually abused children (65.9 per cent) initially presented to the emergency service of hospitals. This finding indicates the need for there to be a strong and effective liaison between this service and the specialty services of hospitals whose primary purpose is the care of children and that in this regard special attention should be given to the early identification and treatment of the emotional and behavioural needs of these children.

5. For most of the sexually abused children who presented to hospitals, a majority of their follow-up care was provided by hospital-based personnel, and setting aside referrals required for other purposes (e.g., legally required), only about one in five children was referred to external agencies.

This finding reflects the common practice, particularly in large tertiary hospitals, to look for help within the hospital complex and to give less attention to the use of alternative facilities in the community that may be more accessible, less structured and formidable, and able to provide a wider range of services to complement those available in the hospital itself.

6. Most of the children appeared to have received a comprehensive examination, but this was not true in all cases. It was found that essential information was often missing about the details of the physical and mental examinations given, the nature of the harms sustained and the services provided.

The review of the findings indicates the need for the development and use of an examination protocol which would serve as an examination and treatment guideline in the care of sexually abused children.

Accordingly, on the basis of the findings of the National Hospital Survey, **the Committee recommends that the Office of the Commissioner in conjunction with the Department of Justice, the Department of National Health and Welfare, and Provincial Departments of Health and Provincial Departments of the Attorneys-General, establish on a short term basis an interdisciplinary expert advisory committee:**

1. To develop a standard protocol for the collection of information, examinations to be conducted, findings to be recorded and other necessary procedures.
2. To make this protocol widely available, particularly to those likely to have the first contacts (such as paediatricians, family practitioners and the staff of emergency departments), that regular in-service instruction be provided in its appropriate use, and that a reimbursement item be developed for the completion of the protocol.

**The Committee further recommends that the Office of the Commissioner in conjunction with the Department of Justice and the Department of National Health and Welfare fund, directly or by other means, a national research study focussing on injuries to sexually abused children. This research would seek to obtain information on: the efficiency of different clinical programs in providing protection and optimum management for these children; the nature of long-term harms sexually assaulted children experience; and how they can most effectively be prevented, anticipated, detected and treated. The Committee regards this as a priority area for research funding. Investigation should be undertaken in conjunction with major hospitals across Canada specializing in providing treatment for sexually abused children.**

While the Committee recognizes that matters relating to the provision of health care fall largely within the jurisdiction of the provinces, it believes that a

national initiative is needed in developing procedures and guidelines for the clinical assessment and treatment of sexually abused children. The Committee is also cognizant of the fact that a number of other legislative and advisory bodies have made somewhat comparable recommendations. The recommendations that the Committee proposes are both feasible and warranted.

The Committee believes that a national initiative along the lines recommended would be one means to strengthen the care and protection of sexually abused children by serving to alert health professionals to the signs of these problems; to indicate the types of examination and procedures it may be appropriate to consider and undertake for these children; to provide a basis for the clear specification of how these children may have been harmed and the follow-up required for their assessment and care by medical and social services; and to develop criteria that are both medically and legally specific in the collection and documentation of evidence.



## Chapter 32

# Medical Classification of Sexual Assault

Statistical classification systems that accurately identify sexual offences and their resulting injuries are essential to the network of public services affording protection for victims of these crimes. To the extent that these classification systems validly reflect the nature of these acts and the harms incurred, they provide an indispensable means of assessing the extent of this problem, the scope of services provided to victims and the nature, gravity and duration of the harms and risks that are entailed.

During the past century, several different statistical systems have been developed with respect to the classification of deaths, diseases and injuries. The most widely recognized system of classification is the *Manual of the International Statistical Classification of Diseases, Injuries and Causes of Death* (Ninth Revision) adopted by the Twenty-Ninth World Health Assembly of the United Nations.<sup>1</sup> The codes in the *Manual* (I.C.D.-9) have been periodically revised to reflect changes in knowledge about the causes of disease, disability and death.

Since the advent of government-sponsored hospital and medical care insurance programs in Canada, all provinces and territories have established statistical classification systems for the identification of diseases, injuries and deaths or for the payment of services provided by hospitals and physicians. Despite variations in the listing of the codes used in these systems, each includes the full range of services provided; most have adopted the principles of codification which comprise the basis of the *International Classification of Diseases*.

It is on the basis of information assembled by these classification systems for diseases, injuries and deaths that assessments are made concerning the general health of Canadians, the extent of disease and disability in the nation and the need for particular types of services. With respect to sexual offences committed against children, youths and adults, these classification systems are a potential source of significant information about the nature and elements of the sexual acts committed and the physical injuries and emotional harms resulting from these acts.

In undertaking its review of the medical assessment and treatment of sexually abused children, the Committee found little consensus among physicians concerning the recognition and identification of a number of the signs of these conditions. Further, there was a sharp discrepancy between the diagnoses made by physicians with respect to these acts and their codification for the purpose of the statistical classification of diseases and injuries. Because the nosological classification systems are intended to be used to assemble information about diseases, injuries and deaths, there is little differentiation in these codes permitting the specification of diagnoses of different types of assaults committed against persons.

The medical research on child abuse and child sexual abuse undertaken in Canada has not relied on existing disease classification systems as reliable sources of baseline information for the purpose of identifying children who have been victims of these offences. In this chapter, some of the limitations noted by researchers about these systems are reviewed, an assessment is given of the categories established for the codification of sexual acts in the *Manual* of the International Classification of Diseases (Ninth Revision), and findings are presented from the National Hospital Survey on the clinical diagnoses made by physicians and their classification in accordance with the codes in the *Manual*. The Committee received valuable assistance in this regard from the Nosology Reference Centre of Statistics Canada and from the Department of Medical Records of the Hospital for Sick Children (Toronto).

## Use of Classification Systems in Medical Research

Few of the Canadian medical research studies on child sexual abuse have relied upon statistical systems for the classification of diagnoses as a principal source of information for the purpose of identifying these types of cases. When this step has been taken, it is typically reported that these sources were incomplete or inappropriate for this purpose; most medical researchers drew directly on listings of child sexual abuse which they had established and had retained separately from the composite statistical classification systems. While this practice is undoubtedly a sound basis upon which to mount research along these lines, the consistent rejection of the classification systems in medical research indicates that these sources have been found to be neither reliable nor valid in providing adequate clinical and statistical information.

Of the main Canadian medical research studies on child abuse and child sexual abuse, only two relied exclusively on cases selected from a hospital's statistical record system. In one of these studies (Nova Scotia Child Abuse Study), a number of participating hospitals had developed special categories for the identification of child abuse.<sup>2</sup> In three of the major research studies, the findings were derived from cases examined or treated by the researchers or their colleagues. In the remainder of the research reports, both means of identifying cases were used, but in each instance, it was noted that the quality of the

information collected directly about patients was more reliable than that which had been derived from the statistical disease classification systems.

That few of the medical researchers who have studied child sexual abuse have relied on disease classification systems as sources of their information is due in part to the fact that when the studies were undertaken, only a few broad categories of child sexual abuse had been assigned in classification systems. In addition, the primary concern of these physicians was to identify, treat and provide protection for the children who were in their care. How these conditions might be clinically identified and subsequently listed were likely to be secondary, if not irrelevant, concerns. In this respect, the Committee knows of no review which has considered, in detail, the medical classification of clinical diagnoses made with respect to sexually assaulted persons (children or adults), or how well these listed categories accord with the full range of sexual acts committed and the types of injuries or harms that patients sustained.

## Manual of the International Classification of Diseases

The *Manual of the International Statistical Classification of Diseases, Injuries and Causes of Death* (Ninth Revision, 1975) was developed for world-wide use as a statistical method for the classification of these conditions. The use of this classificatory index has been mandatory since January 1, 1979 across Canada in the classification of causes of death; starting on April 1, 1979, its use was adopted officially by Statistics Canada in relation to published reports for the classification of inpatient hospital morbidity statistics received from provincial hospital insurance programs. Some provincial medical care plans have adapted sections of the *Manual* for purposes of making payments to physicians by using the code at three or four digit levels, depending upon the degree of specificity required.

The *Manual* of the International Classification of Diseases is divided into 17 chapters in which diseases are grouped by type, site or circumstance. In addition to the classification of diseases, the *Manual* contains several supplementary means of classification:

1. The E Code for the identification of external causes of injury and poisoning.
2. The V Code for the identification of factors that may affect the health status of persons or contacts that patients may have with health services.
3. A dual method of classification for certain conditions according to etiology (identified by a dagger) and localized manifestation (identified by an asterisk), e.g., tuberculous meningitis with a dagger code in the chapter for infectious diseases and an asterisk code in the chapter for diseases of the nervous system.

The dagger and asterisk supplementary codes are not used in the classification of different types of sexual behaviour, acts or offences.



The codes listed in the *Manual* are designed to designate in numerical form the reasons why patients contact health services and the cause(s) of death. The codes may be assigned in relation to a patient's condition based on examination and/or treatment for: an emergency visit; outpatient treatment; inpatient admission; or a visit to a physician's office. With respect to how the codes in the *Manual* may be used in relation to these different types of contacts by patients with health services, no consistent practice is adopted across the nation. Likewise, there is no uniform policy with respect to the number of codes that may be assigned to each patient.

The Nosology Reference Centre of Statistics Canada reports that all provincial hospital insurance plans have adopted the *Manual* of the International Classification of Diseases (or an American modification of this system) for purposes of coding inpatient hospital morbidity statistics. In many provinces, this information is submitted for processing to the Hospital Medical Records Institute (H.M.R.I.). In Ontario, it is mandatory that hospitals submit records for day surgery and treatment for statistical processing to the Institute. The Nosology Reference Centre reports, however, that in most provinces there is no classification of the reasons why patients use hospital outpatient services (ambulatory care provided by hospital clinics and hospital emergency room services). In this respect, the procedures adopted by the Hospital for Sick Children are unusual as information on the causes of injuries are collected and coded for outpatients.

The American adaptation of the *Manual*, the I.C.D.-9-C.M. system, is used by several provincial hospital insurance programs. This system introduces greater specificity in the listing of diseases and conditions by using a 5-digit instead of 4-digit code. The *Diagnostic and Statistical Manual of Mental Disorders* (D.S.M.-3) is another system of classification which extends the scope of certain categories given in the *Manual* (I.C.D.-9), particularly with respect to the identification of psychiatric disorders.<sup>3</sup> The D.S.M.-3 system has been adopted by some Canadian hospitals, but its use is not officially recognized by provincial or federal departments of health. As a result, no provincial or national statistics have been assembled drawing upon this source.

Although their numerical codes vary for some items, the categories of the *International Classification of Diseases* and the *Diagnostic and Statistical Manual of Mental Disorders*, as listed in Table 32.1 are generally comparable with respect to the identification of sexual behaviour, sexual diseases and sexual character disorders. The codes listed in Section 302, Sexual Deviations and Disorders, of the *Manual* of the International Statistical Classification of Diseases are used for persons who seek or are provided with medical attention which can be classified by these categories. In instances in which several conditions are grouped together in one code category, retrieval of one of these conditions is impossible by using the code number alone. The existing categories for some conditions could be used as a means of identifying persons who may have committed certain types of sexual assaults, but there is no means whereby the victims of these offences who received medical attention could be identified by the codes given in Section 302.

Table 32.1

## Medical Classification of Sexual Deviations and Disorders

International Statistical Classification (I.C.D.-9)		Diagnostic & Statistical Manual of Mental Disorders (D.S.M.-3)	
Sexual Deviations & Disorders		Psychosexual Disorders	
		<i>Gender Identity Disorders</i>	
302.5	Trans-sexualism	302.5x	Trans-sexualism
302.6	Disorders of psychosexual identity	302.60	Gender identity disorder of childhood
302.6	Disorders of psychosexual identity	302.85	Atypical gender identity disorder
		<i>Paraphilias</i>	
302.8	Other sexual deviations and disorders	302.81	Fetishism
302.3	Transvestism	302.30	Transvestism
302.1	Bestiality	302.10	Zoophilia
302.2	Paedophilia	302.20	Pedophilia
302.4	Exhibitionism	302.40	Exhibitionism
*302.8	Other sexual deviations and disorders	302.82	Voyeurism
302.8	Other sexual deviations and disorders	302.83	Sexual masochism
302.8	Other sexual deviations and disorders	302.84	Sexual sadism
*302.8	Other sexual deviations and disorders	302.90	Atypical paraphilia
		<i>Psychosexual Dysfunctions</i>	
*302.7	Frigidity and impotence	302.71	Inhibited sexual desire
*302.7	Frigidity and impotence	302.72	Inhibited sexual excitement
*302.7	Frigidity and impotence	302.73	Inhibited female orgasm
*302.7	Frigidity and impotence	302.74	Inhibited male orgasm
*306.5	Genitourinary malfunction arising from mental factors	302.75	Premature ejaculation
302.7	Frigidity and impotence	302.76	Functional dyspareunia
306.5	Genitourinary malfunction arising from mental factors	306.51	Functional vaginismus
*302.7	Frigidity and impotence	302.7	Atypical psychosexual dysfunction
		<i>Other Psychosexual Disorders</i>	
302.0	Homosexuality	302.00	Ego-dystonic homosexuality
*302.8	Other sexual deviations and disorders	302.89	Psychosexual disorder not elsewhere classified
**302.9	Unspecified sexual deviations and disorders		

\* Not specifically indexed, but judged to fit in this category.

\*\*No equivalent DSM-III category.

In addition to the items listed in Section 302 of the International Classification of Diseases, Chapter XVII classifies the nature of any injuries sustained and the supplementary E Codes classify the external causes of the injuries. In the Ninth Revision of the *Manual*, which is widely used across Canada, there is an E Code to identify that a patient has been a victim of rape, but there are no categories for other types of sexual assault such as incest or acts of vaginal or anal penetration.

The existing codes in the Ninth Revision of the *Manual* could be adapted to permit the identification of the injury which was sustained by the type of act committed and to indicate the identity of the suspected or known perpetrator. A child who had been *raped*, for instance, could be classified in this system according to:

- Nature of injury e.g., 959.1
- Plus E Code for rape E 960.1
- Plus E Code for child E 967.0 by parent
- Battering & other maltreatment E 967.1 by other specified person
- E 967.2 by unspecified person

There is no nature of injury code in this system which identifies that a child has been abused or molested other than the Code for the child maltreatment syndrome (995.5). A child who had been the victim of *incest* could be classified according to:

- Nature of injury e.g., 959.1
- Plus E Code for child E 967.0 by parent
- Battering & maltreatment E 967.1 other specified person
- E 967.9 by unspecified person

Under the current usage of the I.C.D.-9, cases classified by the E 967 Code would be grouped with victims of physical maltreatment, making retrieval of sexual maltreatment impossible.

The V Code of the Ninth Revision of the *Manual* is used to identify a number of abnormal family circumstances e.g., V61.2, Parent-Child Problems, which includes the seeking or obtaining of care as a result of child abuse. The V Code is not used for the purpose of identifying sexual offences committed against children or adults. This section also excludes the specific identification of maltreated children. Cases of this kind are coded 995.5 (child maltreatment syndrome), which includes: battered baby; and the emotional and/or the nutritional maltreatment of the child.

**With respect to the identification of child sexual abuse by the codes listed in the *Manual* of the International Statistical Classification of Diseases, the Committee concluded that:**



1. Except for the E Code which might be adapted for this purpose, the I.C.D.-9 does not permit the identification of events since it is a system developed for the statistical classification of diseases.
2. There is no direct means for the identification of the results of most categories of sexual assault, unless injuries had been sustained.
3. The adaptation of the existing system, in order to identify victims of sexual assault, would likely prove to be cumbersome, except for specialists in nosology who were expert in using this system.
4. The use of the system is limited in practice across Canada to the classification of deaths or the conditions of patients who had been admitted to hospitals. The use of the system has not been extended to include the classification of conditions of patients provided with outpatient hospital services or those who are treated by physicians in private medical practice. Since the Committee's findings show that a majority of sexually assaulted children receiving medical care are not hospital inpatients, most cases of child sexual abuse would still fail to be identified, even if the existing classification system were amended.

## Classification of Medical Diagnoses

In the National Hospital Survey, the diagnoses made by physicians who had examined or treated sexually assaulted children were transcribed, as they had been written in hospital charts, to the research protocols. A total of 65 clinical diagnoses was given with respect to children and youths who were suspected or confirmed to have been sexually abused. With the assistance of the Nosology Reference Centre of Statistics Canada and the Department of Medical Records of the Hospital for Sick Children, these 65 clinical diagnoses were coded using the system set out in the *Manual* of the International Statistical Classification of Diseases (Ninth Revision). In the case of the Hospital for Sick Children, these diagnoses were classified with respect to a supplementary 2-digit code adopted by the Department of Medical Records of the Hospital.

The results of the statistical classification of the 65 clinical diagnoses made by physicians of child sexual abuse are given in Table 32.2. The first column, Diagnoses Given by Attending Physician, lists the diagnoses transcribed directly from patients' charts in the National Hospital Survey. In the second and third columns, the numerical and written classification of these diagnoses is listed in accordance with the Coding Book used by the Hospital for Sick Children. The fourth and fifth columns list a comparable assessment of the physicians' diagnoses provided by the Nosology Reference Centre of Statistics Canada.

**Table 32.2**  
**Statistical Classification of Medical Diagnoses**  
**given for Suspected/Confirmed Cases of Child Sexual Abuse**

Diagnoses Given By Attending Physician	Hospital for Sick Children		Nosology Reference Centre	
	ICD-9 (adapted)	Code Book Classification	ICD-9	Code Book Classification
Abdominal pains	7890	Abdominal pain.	789.0	Abdominal pain.
Alleged physical abuse	9955-01	Battered child syndrome.	995.5 E 967.9	Child maltreatment syndrome; child battering & other maltreatment by unspecified person.
Alleged rape	—	—	V 71.5	Observation following alleged rape or seduction.
Alleged sexual abuse & behavioural problem	—	—	995.5 E 967.9 V 40.9	Child maltreatment syndrome; child maltreatment by unspecified person; unspecified mental & behavioural problems.
Alleged sexual abuse molestation	—	—	995.5 E 967.9	Child maltreatment syndrome; child battering and other maltreatment by unspecified person.
Alleged sexual abuse & skin irritation	—	—	995.5 E 967.9 709.8	Child maltreatment syndrome; child maltreatment by unspecified person; other disorders of skin.
Alleged sexual abuse/urinary tract infection	—	—	995.5 E 967.9 599.0	Child maltreatment syndrome; child maltreatment by unspecified person; urinary tract infection, site not specified.
Alleged sexual abuse & venereal disease	—	—	995.5 E 967.9 099.0	Child maltreatment syndrome; child maltreatment by unspecified person; venereal disease, unspecified.
Alleged sexual assault/venereal disease	—	—	— 099.0	Venereal disease, unspecified.

**Statistical Classification of Medical Diagnoses  
given for Suspected/Confirmed Cases of Child Sexual Abuse**

Diagnoses Given By Attending Physician	Hospital for Sick Children		Nosology Reference Centre	
	ICD-9 (adapted)	Code Book Classification	ICD-9	Code Book Classification
Alleged sexual assault without penetration	—	—	—	—
Alleged/suspected/possible sexual assault	—	—	—	—
Alleged sexual intercourse with a minor	—	—	—	—
Anxious, distracted Assault	3000	Anxiety/neurosis/reaction	300.0	Anxiety states
Attempted sexual assault	—	—	959.9	Injury NOS, unspecified site assault, unspecified means
Balanitis (urinary tract infection — inflammation)	6071	Balanitis	E 968.9	—
Bruising	9198	Superficial injury	607.1	Balanoposthitis (inc. Balanitis).
Corrupting the morals of a child	—	—	924.9	Contusion, unspecified site.
Distress re: home situation	—	—	—	—
Drug overdose	9779	Poisoning, drugs.	V 61.9	Family circumstances, unspecified.
Eczema or other skin disease	6918	Infantile eczema/dermatitis.	977.9	Poisoning, unspecified drug.
Facial trauma	7099	Disease, Skin/subcut. tissue.	692.9	Eczema NOS.
	9590	Facial	709.9	Disorder of skin, unspecified.
Family patterns of violence and failure	—	—	959.0	Injury NOS, face and neck.
Gastritis	5355	Gastritis	—	—
Gross indecency/Indecent assault	—	—	535.5	Unspecified gastritis and gastroduodenitis.



**Table 32.2 (continued)**  
**Statistical Classification of Medical Diagnoses**  
**given for Suspected/Confirmed Cases of Child Sexual Abuse**

Diagnoses Given By Attending Physician	Hospital for Sick Children		Nosology Reference Centre	
	ICD-9 (adapted)	Code Book Classification	ICD-9	Code Book Classification
Gynaecologically normal (not indicated if sexually active or not)	—	—	—	—
Hepatitis B and Gonococcal (G.C.) infection	0703 0988-98	Hepatitis B, viral, without hepatic coma. Gonococcal infection.	070.3 098.0	Viral hepatitis B without mention of hepatic coma. Acute gonococcal infection of lower genitourinary tract
History of third party sexual abuse	—	—	—	—
Incest	—	—	—	—
Infection/irritation	1368	Infectious/parasitic disease.	136.9	Infection, unspecified.
Infection & venereal disease	—	—	136.9 099.9	Infection, unspecified; Venereal Disease, unspecified.
Intent to sexually assault	—	—	—	—
Medically healthy child	V719	No disease found.	—	—
Negative behaviour, poor self-image due to sexual abuse	—	—	V 40.3	Other behavioural problems.
No evidence of vaginal penetration	—	—	—	—
Pelvic inflammatory disease (P.I.D.)	6149	Pelvic inflammatory disease.	614.9	Unspecified inflammatory disease of female pelvic organs and tissues.
Perineal bleeding	—	—	624.8	Other non-inflammatory disorders of vulva and perineum.
Perineal trauma	—	—	959.1	Injury NOS, trunk (inc. perineum).
Physical injuries	—	—	959.9	Injury NOS, unspecified site.
				—

**Statistical Classification of Medical Diagnoses  
given for Suspected/Confirmed Cases of Child Sexual Abuse**

Diagnoses Given By Attending Physician	Hospital for Sick Children		Nosology Reference Centre	
	ICD-9 (adapted)	Code Book Classification	ICD-9	Code Book Classification
Physical & sexual abuse	—	—	995.5 E 967.9	Child maltreatment syndrome; child maltreatment by unspecified person.
Possible sexual molestation by sibling	—	—	—	—
Pregnancy	V222	Pregnant state.	V22.2	Pregnant state NOS.
Questionable whether abuse has occurred	—	—	—	—
Rape	—	—	959.9 E 960.1	Injury NOS, unspecified site. Rape
Reactive behavioural problem	—	—	V 40.3	Other behavioural problem.
Second & third degree burns	3099-02 9490-01	Childhood adjustment reaction. Burn.	949.2 949.3	Burn, unspecified site, 2nd degree. Burn, unspecified site, 3rd degree.
Sexual abuse (Incest)	—	—	995.5 E 967.0 (or .1)	Child maltreatment syndrome; child maltreatment by parent (or by other specified person).
Sexual abuse without penetration, incest.	—	—	995.5 E 967.0 (or .1)	Child maltreatment syndrome; child maltreatment by parent (or by other specified person).
Sexual abuse & urinary incontinence (not related to sexual abuse)	—	—	995.5 E 967.9 788.3	Child maltreatment syndrome; child maltreatment by unspecified person; incontinence of urine.
Sexually active/ intercourse has occurred.	—	—	—	—
Sexual assault	9599-02	Sexual assault.	—	—
Sexual assault/digital penetration only	—	—	—	—

Table 32.2 (concluded)

Statistical Classification of Medical Diagnoses  
given for Suspected/Confirmed Cases of Child Sexual Abuse

Diagnoses Given By Attending Physician	Hospital for Sick Children		Nosology Reference Centre	
	ICD-9 (adapted)	Code Book Classification	ICD-9	Code Book Classification
Sexual assault (Incest)	—	—	—	—
Sexual molestation with penetration	—	—	V 62.9	Other psychosocial circumstances, unspecified.
Social problems	V629	Social problem.	—	—
Subject of lesbian activities	—	—	959.9	Injury NOS, unspecified site suicide and self-inflicted
Suicide attempt	3009-04	Suicidal attempt.	E 958.9	injury, unspecified means.
Suspected sexual abuse	—	—	995.5	Child maltreatment syndrome.
Use of psychological defense	—	—	E 967.9	Child maltreatment by unspecified person.
mechanisms/psychological reaction	—	—	—	—
to abuse	—	—	—	—
UTI	5990-01	UTI.	599.0	Urinary tract infection, site not specified.
Vaginal discharge	6235	Vaginal discharge.	623.5	Leukorrhoea, not specified as infective (inc. vaginal discharge NOS).
Vaginal discharge possible sexual	—	—	623.5	Leukorrhoea, not specified as infective (inc. vaginal discharge NOS).
assault	—	—	—	—
Veneral disease	0999	Veneral disease.	099.0	Veneral disease, unspecified.
Veneral disease unlikely	—	—	V 71.8	Observation for other specified suspected condition.
Vulvovaginitis with hymenal	6163-03	Vulvovaginitis.	616.1	Vaginitis and vulvovaginitis.
lacerations	—	—	878.6	Open wound of vagina, without mention of complication.



The findings indicate that relying upon the coding procedures adopted by the Hospital for Sick Children's system, about two-thirds (64.6 per cent) of the medical diagnoses given in relation to suspected and/or confirmed cases of sexual abuse were not identified for purposes of statistical identification.

A review was undertaken of the 65 medical diagnoses in relation to their confirmation or non-confirmation that a child had been sexually abused. The diagnoses were categorized with respect to whether there was: a *definite* indication of sexual abuse; a *probable* indication of sexual abuse; a *possible* indication of sexual abuse; and *no indication* that the condition identified was likely to be related to an incident of sexual abuse.

Diagnostic Indications of Sexual Abuse	Number of Diagnoses	Diagnoses Identified by Adapted I.C.D.-9/H.S.C.	Proportion of All Diagnoses Identified by Adapted I.C.D.-9/H.S.C.
			(%)
Definite	11	1	9.1
Probable	13	4	30.8
Possible	15	3	20.0
No Indication	26	15	57.7
TOTAL	65	23	35.4

Of the 11 diagnoses made by physicians which provided a *definite* indication that child sexual abuse had occurred, only one (9.1 per cent) was identified by means of the coding procedures used at the Hospital for Sick Children. The proportion of the diagnoses identified by this means rose to 30.8 per cent for diagnoses indicating *probable* incidents of sexual abuse, dropped slightly to 20.0 per cent for diagnoses indicating *possible* incidents of this kind, and accounted for about three in five (57.7 per cent) of the diagnoses in which there was *no indication* of sexual abuse having occurred.

In the fourth and fifth columns of Table 32.2, the results are listed of the classification of the 65 diagnoses undertaken by the Nosology Reference Centre of Statistics Canada. These findings differ from those obtained involving the classification of diagnoses undertaken by the Department of Medical Records of the Hospital for Sick Children. With respect to identifying statistically diseases and conditions, two in three (67.7 per cent) of the 65 diagnoses were coded in relation to the listings given in the *Manual* of the International Statistical Classification of Diseases.

In the review of the 65 diagnoses made by the Nosology Reference Centre, slightly over half (54.5 per cent) of the diagnoses providing a *definite* indication of child sexual abuse were identified by means of the codes in the I.C.D.-9 *Manual*. The proportions of the diagnoses for the remaining three categories of diagnoses were: *probable* indications of sexual abuse, 76.9 per cent; *possible*

Diagnostic Indications of Sexual Abuse	Number of Diagnoses	Diagnoses Identified by I.C.D.-9/N.R.C.	Proportion of All Diagnoses Identified by I.C.D.-9/N.R.C.
			(%)
Definite	11	6	54.5
Probable	13	10	76.9
Possible	15	9	60.0
No Indication	26	19	73.1
TOTAL	65	44	67.7

indication of sexual abuse, 60.0 per cent; and *no indication* of sexual abuse, 73.1 per cent.

While two in three of the 65 diagnoses were statistically coded by the Nosology Reference Centre in relation to the classification of the I.C.D.-9, a number of these listings fell into general categories. For instance, the listing in the I.C.D.-9 Manual of "Abuse, Child" is considered under: Child Maltreatment Syndrome (995.5); and Child Maltreatment by Unspecified Person (E 967.9). No differentiation is made in these categories between physical and sexual abuse. Although the diagnoses providing a definite indication of child sexual abuse may be classified in relation to these codes of the I.C.D.-9, for the purposes of identifying child sexual abuse, much of this information is effectively lost; for certain codes in the *Manual*, no identification of child sexual abuse having been diagnosed can subsequently be retrieved from the diagnostic statistics compiled by this means.

When diagnoses which were classified under general non-specific codes are set aside, and only those for which there was a specific indication of sexual abuse are retained, then about half (49.2 per cent) of the 65 diagnoses are accurately identified with respect to their classification in relation to the I.C.D.-9 *Manual* undertaken by the Nosology Reference Centre. In relation to the four categories of diagnoses, the proportions identified in the revised listing were:

Diagnostic Indications of Sexual Abuse	Number of Diagnoses	Revised Listing of Diagnoses Identified by I.C.D.-9/N.R.C.	Proportion of All Diagnoses Specifically Identified by I.C.D.-9/N.R.C.
			(%)
Definite	11	4	36.4
Probable	13	7	53.8
Possible	15	5	33.3
No Indication	26	16	61.5
TOTAL	65	32	49.2

In the revised listing, of the 11 diagnoses providing a *definite* indication of sexual abuse, about one in three (36.4 per cent) was accurately identified in relation to the I.C.D.-9 classification. The proportions for the other categories were: *probable* indications of sexual abuse, 53.8 per cent; *possible* indications of sexual abuse, 33.3 per cent; and *no indication* of sexual abuse, 65.4 per cent.

The findings from the reviews undertaken by the Department of Medical Records of the Hospital for Sick Children and the Nosology Reference Centre of Statistics Canada indicate that there is a sharp discrepancy between diagnoses made by physicians and how these diagnoses may be subsequently classified for purposes of statistical diagnostic classification. With respect to the intended use of the statistical classification systems, it must be noted that they were developed for the purposes of identifying diseases, injuries and causes of death. However, it is apparent that in this respect, some types of sexual acts and behaviour are identified, while others are omitted or are subsumed within general codes. It is also evident that there is a considerable loss of specific types of information in relation to the identification of certain diagnoses due to their conversion to code numbers representing groups of diagnoses or conditions. There is also a lack of differentiation (in the E Codes, in particular) between physical and sexual abuse.

These findings on the statistical classification of diagnoses obtained in relation to the examination of sexually abused children indicate that the utility of any classification system is contingent upon the quality of the information provided. A number of the diagnoses given by physicians in relation to child sexual abuse lacked specificity with respect to indicating the details of the cases examined.

**With respect to the identification of suspected or confirmed instances of child sexual abuse, the basic disease classification system which is widely used (or adapted) across the nation must be considered inadequate, if not invalid.**

**Virtually none of the major conditions diagnostically identified by physicians in relation to sexual abuse is recognized in the existing statistical codes. These unidentified conditions, include, among others: alleged/confirmed sexual abuse/assault; intercourse with a minor; vaginal and anal penetration; incest; perineal bleeding/trauma; rape; and the touching/fondling of the sexual parts of the body.**

## Summary

In the Committee's view, having a disease classification system which identifies with reasonable accuracy medically examined cases of suspected and/or confirmed sexual abuse is an essential component of the services required for the protection of victims of these offences. In the absence of such a system, it is not possible to determine the extent of these medically reported conditions and, of greater importance for the well-being of the child, to assess



the physical and emotional harms sustained and their long-term impact on the child's health.

The existing disease classification system provides for the identification of fetishism, pedophilia, exhibitionism, sexual deviation, homosexuality and transsexualism, among others. All of these categories pertain to persons having these attributes or committing these acts. These categories do not permit the identification of persons against whom sexual acts may be committed. It is an anomaly that while certain types of sexual behaviour and disorders are identified, no specific reference is made to persons committing incest or sexual assaults.

The existing classification system for the identification of sexual behavioural and character disorders is a conceptual compost heap which has been added to without sufficient consideration being given to the specification of particular categories or to the sum of its parts. It is inconsistent, for instance, with respect to the inclusion of some categories, but the exclusion of other major types of sexual behaviour. Most of the existing categories are loosely defined and do not permit a reasonably uniform and consistent identification of behaviours and disorders, e.g., pedophilia. In the Committee's view, most of these categories should be dropped and be replaced by a classification system which is inclusive with respect to the identification of the types of sexual acts for which persons may have a predisposition to commit and the acts committed.

The main deficiency of the existing classification systems is that they do not permit the sufficient or complete identification of persons against whom sexual acts are committed and how they may be injured. What is required is a classification system having the capacity to identify accurately:

1. The types of sexual acts committed.
2. The circumstances or events under which the acts were committed (e.g., involving assault).
3. The type of association between the person committing the act and the patient (e.g., incest).
4. The types of physical injuries and emotional harms sustained.

Elsewhere in the Report, the Committee has developed categories for the specific identification of sexual acts, persons committing these acts and the circumstances under which the acts occur. These elements should comprise the basis for the development of a revised classification system.

On the basis of the Committee's review of the clinical medical research dealing with child sexual abuse, it is evident that these sources cannot, as yet, be considered as an adequate system for the identification of the types of medically examined cases of child sexual abuse, nor do they provide sufficiently detailed information about how sexually abused children were injured. With respect to these issues, there is now virtually an informational vacuum in Canada. Neither the widely used systems for the classification of diseases and

conditions nor the body of available clinical medical research provides adequate information concerning the identification of these conditions or the injuries resulting from them.

The Committee recognizes that a review of the *International Classification of Diseases* (Ninth Revision) is being undertaken by the World Health Organization. This review is scheduled to be completed before the end of the 1980s. The Committee believes that the Government should not postpone consideration of the revision of the I.C.D.-9 now being widely used across Canada until the international review has been completed. There is no assurance that the international review will address the concerns identified by the Committee.

The Committee recommends that the Office of the Commissioner in consultation with the provinces, the Department of Justice, the Department of National Health and Welfare and Statistics Canada, appoint an expert advisory committee comprised of experts in nosology, paediatrics and the law to:

1. Review the codes of the *International Classification of Diseases* (Ninth Revision) in order to determine how these do or do not permit the identification of diagnoses relating to persons, both children and adults, who have been sexually abused.
2. Develop a revised classification with respect to the identification of physical injuries and emotional harms associated with sexual assault.
3. Enlarge this system with respect to the identification of the events or persons associated with these assaults (e.g., incest), in relation to:
  - (i) the types of sexual acts committed;
  - (ii) the circumstances or events under which the acts were committed;
  - (iii) the type of association between the person committing the act and the patient; and
  - (iv) review and make recommendations with respect to the identification of sexual abuse within the framework of medical services provided to: hospital outpatients; and patients examined and treated by physicians in private medical practice.

On the basis of the review and recommendations provided by the expert advisory committee, the Committee recommends further that the Office of the Commissioner in co-operation with the Government of Canada should:

1. Implement the recommended revisions with respect to the classification by Statistics Canada of hospital morbidity and death statistics.
2. Consult with the provinces to review means whereby the classification of medical services provided on an ambulatory basis can be revised to identify statistically persons who have been sexually assaulted and injured.
3. Make representation to the international nosological review committee of the World Health Organization with respect to effecting amendments along these lines to be contained in the Tenth Revision of the *International Classification of Diseases*.

## References

### Chapter 32: Medical Classification of Sexual Assaults

- <sup>1</sup> World Health Organization. *Manual of the International Classification of Diseases, Injuries and Causes of Death*. Ninth Revision. Geneva, 1978.
- <sup>2</sup> Fraser, F.M., J.P. Anderson and K. Burns, *Child Abuse in Nova Scotia*. Halifax, 1973, pp. 25-27.
- <sup>3</sup> American Psychiatric Association. *Diagnostic and Statistical Manual of Mental Disorders*. Third edition. Washington, D.C., 1980.



## Chapter 33

# Live Births, Therapeutic Abortions and Sexually Transmitted Diseases

An outstanding characteristic of the sexual offences in the *Criminal Code* is the attempt to provide protection by means of prohibitions against sexual intercourse with young females. This no doubt reflects moral concerns, as do other prohibitions against sexual misconduct. However, the prohibitions against sexual intercourse specified in the *Criminal Code* also indicate concern with the consequences for young girls of health risks from pregnancy and sexually transmitted diseases. Although these concerns were expressed almost 60 years ago in the United Kingdom *Report of the Departmental Committee on Sexual Offences Against Young Persons*,<sup>1</sup> comprehensive information on these health risks has yet to be obtained.

The findings presented in this chapter draw upon official national statistics concerning live births and therapeutic abortions of young Canadian females. In relation to sexually transmitted diseases contracted by children and youths, the Committee was provided with national statistics by the Bureau of Epidemiology of the Department of National Health and Welfare. The Manitoba Department of Health, Sexually Transmitted Disease Control Program, made findings available to the Committee concerning reported cases for 1980 and 1981 involving children who were age 16 and younger.

## Live Births

The 1925 United Kingdom *Report of the Departmental Committee on Sexual Offences Against Young Persons* noted that:

“Another argument which impresses us is the physical injury to a girl of 15 or younger who gives birth to a child. Whether she consents or not, modern legislation and public opinion desire to make her interest paramount.”<sup>2</sup>

This argument was advanced in support of a recommendation for an absolute prohibition against sexual intercourse with a girl under 16. At the time, there was no question of performing a legal abortion. Today, females 15 or younger who become pregnant are recognized to be in a high risk category and

require specialized care and attention. They are subject to greater hazards at different trimesters of pregnancy. They are likely to deliver prematurely and to have babies who are also likely to be in a high risk category.

There is a substantial number of these hazardous pregnancies in Canada.<sup>3</sup> In 1981, there was one live birth to an 11 year-old, one to a 12 year-old, 35 to 13 year-olds, 231 to 14 year-olds, 938 to 15 year-olds and 2,749 to 16 year-olds. Of the 268 live births to females under 15 years, four were second births, and of the 938 live births to 15 year-olds, 17 were second births. Most of the 268 live births to females under 15 years (97.6 per cent) were to single women. For purposes of comparison, 59.2 per cent of the 29,062 live births to females 15 to 19 years were to single women.

## Therapeutic Abortions

The *Criminal Code* was amended in 1969 to permit therapeutic abortions to be performed in certain circumstances. In 1981, 10 twelve year-olds, 84 thirteen year-olds and 450 fourteen year-olds had their pregnancies terminated. One of the 14 year-olds had one previous delivery. In addition, 1,262 fifteen year-olds had their pregnancies terminated. Fourteen of these cases had one previous delivery. For purposes of comparison, 2,850 sixteen years-olds had their pregnancies terminated. Of these, 65 had a previous delivery and one had two previous deliveries. Most of the 15 year-olds (99.6 per cent) and 16 year-olds (99.2 per cent) were unmarried.<sup>4</sup> The average therapeutic abortion rate per 100 live births for females between 15 and 17 from 1974 to 1981 was 4.5 times the average rate for all ages. For females under 15, the therapeutic abortion rates for the same period were between 3.2 (1974) and 2.3 (1981) times the rates for those between 15 and 17 (average 2.6).<sup>5</sup>

Table 33.1 shows that the proportion of pregnant females having therapeutic abortions in the first trimester in 1981 varied from 76.6 per cent of those under 14 to 82.6 per cent of those 18 and 19. At the same time, the proportion having abortions from 13-20 weeks' gestation varied from 23.4 per cent of those under 14 to 17.2 per cent of those 18 and 19. The most important fact here is that more than three-quarters of teenage girls and those even younger having therapeutic abortions had had them during the first trimester. However, there is also a slight gradual rise in the proportion of earlier abortions from 14 to 19 years, with a corresponding slight gradual decrease in the proportion of later abortions.<sup>6</sup>

The proportion of females under 15 years having complications associated with a therapeutic abortion is almost double that for females of all ages at all stages of gestation. The complication rates per 100 therapeutic abortions for females under 15 years is 25 per cent higher than for those 15-19 years of age, and almost twice as high as for those 20-24 years of age.<sup>7</sup> Abortion complications for girls under age 15 included: haemorrhage; laceration of the cervix; perforation of the uterus; and retained products of conception. Infection was an additional complication with those 15-19 years.<sup>8</sup> Later complications may

**Table 33.1**  
**Therapeutic Abortions among Females under Age 20**  
**by Weeks of Gestation, Canada, 1981**

Weeks of Gestation	Under 14 Years (n=94)	14-15 Years (n=1 712)	16-17 Years (n=6 662)	18-19 Years (n=9 801)
	Per Cent	Per Cent	Per Cent	Per Cent
Under 9 weeks	19.2	18.4	17.5	19.5
9 – 12 weeks	57.4	59.9	61.9	63.1
13 – 16 weeks	18.1	14.9	14.5	12.7
17 – 20 weeks	5.3	6.1	5.9	4.5
21 weeks and over	—	0.7	0.2	0.2
<b>TOTAL</b>	100.0	100.0	100.0	100.0

Canada. Statistics Canada. *Therapeutic Abortions 1981*, Ottawa: Supply and Services Canada, 1983, based on Table 26, p. 79.

include: infertility and tubal pregnancies secondary to tubal adhesions or to partial or complete obstruction after infection; and premature delivery in subsequent pregnancies which may be related to the laceration of the cervix and the later inability of the uterus to retain an increasing mass of a normally developing pregnancy. The abortion complication cases from 1974 to 1981 as a proportion of the total abortion cases for the period show a general decrease for all ages. However, the figure for females under 15 years is always the highest, followed by the figure for those 15 to 19 years-old. In the former case, it was 9.3 per cent in 1974 and 4.4 per cent in 1981. In the latter, it was 4.1 per cent in 1974 and 3.3 per cent in 1981. For purposes of comparison, the proportion for females 20-24 years-old was 2.8 in 1974 and 2.3 in 1981.<sup>9</sup>

The 1977 *Report of the Committee on the Operation of the Abortion Law* found that “the contraceptive practices of young and single females made them a high-risk group in terms of becoming pregnant”.<sup>10</sup> Females 15 and younger who become pregnant are considered to be in a high risk category. Therapeutic abortions performed on young girls carry a higher than normal risk of complications at all stages of gestation and pregnancy subjects young girls to substantial risk of harm. The enactment of the legislation proposed by *Bill C-53* and the *Working Paper* would have significant implications for pregnancy and the resulting risk of harm. Removing the criminal law prohibition against sexual intercourse with young girls from substantial proportions of their partners who are close in age would do nothing to protect the girls against the physical risks of pregnancy.



## Sexually Transmitted Diseases

Provincial and Territorial governments recognize the importance of providing protection against the spread of sexually transmitted disease through a system of public health statutes and regulations which require the reporting and treatment of cases of venereal disease. These provisions encourage accurate diagnosis and appropriate treatment; however, it would appear that in a great many cases where treatment is given for sexually transmitted disease, there is no reporting and no follow-up to prevent the further spread of the disease to other persons.

The medical philosophy that has emerged in recent years appears to be directed towards treating individual cases as symptoms and signs without necessarily confirming the diagnosis and tracing and treating the patients' contacts. This philosophy is buttressed by what has become a general concern for confidentiality, so that it is common for physicians not to report these conditions. Indeed, there is a reluctance to record a specific diagnosis of a venereal disease.<sup>11</sup> The result is that the public health objectives supported by the statutes and regulations are not as actively pursued, although current outbreaks of diseases, such as Acquired Immune Deficiency Syndrome, are drawing attention again to the importance of public health protection. The Committee believes that failure to improve and enforce the provisions of the public health laws deprives children and youths of an important protective mechanism against the health consequences of these diseases.

In order to assess the extent to which children who had been sexually assaulted were at risk of contracting a sexually transmitted disease, the Committee sought to obtain this type of information in each of the national surveys in which it appeared feasible that such findings might be identified. The Committee was assisted in this review by the Bureau of Epidemiology of the Department of National Health and Welfare, which provided national statistics on the reported distribution of gonococcal infections and which listed provincial programs in which existing reporting procedures identified higher rates for these diseases than other provinces.

In this respect, the Committee received valuable assistance from: Social Hygiene Services of the Alberta Department of Social Services and Community Health; and the Manitoba Department of Health, Sexually Transmitted Disease Control Division. On behalf of the Committee, the latter Program assembled information on all children who were age 16 years and younger for 1980 and 1981 in relation to cases examined and/or treated by physicians and agencies reporting notifiable cases to the Control service. The unique information presented in this chapter was made possible by the recording practices of the Manitoba STD Control Program which operates in accordance with the terms of the public health law. No names were identified in the information provided to the Committee, yet the importance of this information for monitoring the effectiveness of laws for the protection of children and youths is obvious in relation to the significant findings obtained.

In presenting these findings, the Committee recognizes that the children and youths for whom this information is given are not representative of all children who have been victims of sexually transmitted disease. In addition to the difficulties involved in obtaining information about children who have been sexually assaulted, attempting to ascertain whether they may have contracted a venereal disease requires lifting the veil on an issue about which there is an equal, if not greater, social stigma. For these reasons, there appear to have been few attempts made to obtain such information, and the cases that are known are generally believed to comprise a small fraction of the actual prevalence.

## Nosology

The term, “venereal disease”, which more recently has been referred to by the phrase, “sexually transmitted diseases”, includes a number of different infectious diseases acquired by sexual intercourse and other sexual acts. The term ‘sexually transmitted disease’, or as it is known in Europe, ‘sexually transmissible diseases’, includes the full listing of the following conditions.

1. Syphilis, caused by *Treponema pallidum*
2. Gonorrhea, caused by *Neisseria gonorrhoeae*
3. Chancroid, caused by *Haemophilus ducreyi*
4. Lymphogranuloma venereum caused by *Chlamydia trachomatis* serotypes L1, L2 and L3
5. Granuloma inguinale, caused by *Calymmatobacterium granulomatis*
6. Nongonococcal urethritis, cervicitis and vaginitis for which there are a number of agents including *Chlamydia trachomatis*, *Ureaplasma urealyticum* and *Gardnerella vaginalis*
7. Trichomoniasis caused by *Trichomonas vaginitis*
8. Genital herpes infection, caused by *Herpes virus hominis*, Types I and II
9. Ophthalmia Neonatorum caused by *Chlamydia trachomatis*. This is a purulent eye disease in infants.

In addition to these conditions, there are many other forms of sexually transmitted diseases. Male homosexuals, for instance, may transmit a group of gastrointestinal maladies, including amoebiasis, giardiasis, parasitic worms, shigellosis and salmonellosis. The recently discovered disease, AIDS (Acquired Immune Deficiency Syndrome), is also found in some homosexual or bisexual males and in their sexual partners. The etiological agent for this disease has not been identified.

The etiology, or the factors that are known or suspected to cause these diseases, varies in relation to each condition. Gonorrhea, for instance, is caused by the gonococcus, *Neisseria gonorrhoeae*, and spread by sexual contact. Some women are asymptomatic carriers of the organisms. Asymptomatic infection is

also found in some homosexual men, especially in the oropharynx and rectum. The usual incubation period in both sexes is between two and seven days. There is pain in the urethra and burning on urination, with frequency of urination and a purulent yellowish green discharge. The associated complications resulting from this disease include chronic urethral inflammation, epididymitis and, at a late or chronic stage, orchitis. There may be abscesses around the urethra and prostate, with subsequent urethral strictures and fistulae.

In women, symptoms of gonococcal infection are often absent or frequently so mild as to pass unnoticed. If sought, cervicitis, and occasionally urethritis, may be found. The most serious complication is salpingitis, occurring frequently in women under the age of 25, including small girls. Abdominal pain of variable intensity is present and accompanied by fever. Tubal and pelvic abscesses may occur. The resulting scarring of the fallopian tubes may result in infertility or ectopic pregnancy. Gonorrhea may also cause serious infections of the eye, especially in newborns which, if not prevented or inadequately treated, may result in blindness.

Disseminated gonococcal infection spreading throughout the whole body with joint pains may be a considerable diagnostic challenge. Gonococcal arthritis is more common in women than in men. The onset is acute, usually occurring in one joint, which is severely painful with fever. All forms of gonorrhea can be adequately treated with appropriate antibiotic drugs. The prevalence of penicillin-resistant gonorrhea is becoming more common all over the world.

## Medical Classification

The *International Classification of Diseases* (Ninth Revision) identifies diseases numerically and by title, and groups these diseases into a number of broad types of conditions. One of these categories, Infective and Parasitic Diseases, lists those conditions that are generally recognized as being communicable or transmissible, and within this category, the numerical identification is given for sexually transmitted diseases.

A number of different codes may be used with respect to the different manifestations of syphilis and gonorrhea. From a perspective of prevention, emphasis is warranted on those diseases which can be transmitted between persons. With respect to non-gonococcal urethritis, cervicitis and vaginitis, it is now more feasible than it was a few years ago to make more accurate diagnoses in terms of the agents involved. For certain conditions which are believed to be more prevalent now than in the past (e.g., herpes and chlamydia), a more complete and detailed listing is required for the specific identification of these conditions.

**In the Committee's judgment, consideration is warranted in relation to the development of a consolidated and distinctive classificatory grouping that brings together all types of sexually transmitted diseases.**



Types of Conditions	International Statistical Classification 9th Revision 1975
<i>The Traditional Venereal Diseases</i>	
• Syphilis	090-097
• Gonorrhea	098 (and others)
• Chancroid	099.0
• Lymphagranuloma venereum	099.1
• Granuloma inguinale	099.2
<i>Conditions Formerly Grouped Together as Non-gonococcal Urethritis (NGU and Non-gonococcal Cervicitis &amp; Vaginitis</i>	099.4
• Chlamydia urethritis ( & cervico-vaginitis)	
• Mycoplasma urethritis ( & vaginitis)	
• Corynebacterim vaginitis ( & urethritis)	
• Non-specific urethritis	
• Non-specific vaginitis	
• Trichomoniasis	131.0 (and others)
• Vulvovaginal candidiasis	112.1
<i>Other Sexually Transmitted Diseases</i>	
• Venereal Warts (Condylomata acuminata)	078.1
• Molluscum contagiosum	078.0
• Genital herpes infection	054.1
• Crab lice infestation	132.2
• Scabies	133.0
• Hepatitis A	070.1
• Hepatitis B	070.3
• Genital Group B streptococcal infection: — Amoebiasis	006.9
— Shigellosis	004.9
• Genital cytomegalic infection	078.5
• Reiters Disease	099.3

Section 253 of the Criminal Code provides:

253. (1) Every one who, having venereal disease in a communicable form, communicates it to another person is guilty of an offence punishable on summary conviction.

(2) No person shall be convicted of an offence under this section where he proves that he had reasonable grounds to believe and did believe that he did not have venereal disease in a communicable form at the time the offence is alleged to have been committed.

(3) No person shall be convicted of an offence under this section upon the evidence of only one witness, unless the evidence of that witness is corroborated in a material particular by evidence that implicates the accused.

(4) For the purposes of this section, “venereal disease” means syphilis, gonorrhea or soft chancre.

Section 253 was first enacted, in somewhat different terms, in 1919.<sup>12</sup> The section then created a new criminal offence in Canada, as it had been decided

in the late nineteenth century that the communication of venereal disease was not an offence at common law.<sup>13</sup> The restrictive definition of “venereal disease” in the current section 253 has remained unchanged since its original inclusion in 1919.

The only reported legal decision in Canada concerning this offence<sup>14</sup> is the 1926 case of *R. v. Leaf*.<sup>15</sup> The accused was charged and convicted of manslaughter, on the basis that he communicated venereal disease to a woman who subsequently died as a result. According to medical evidence adduced at trial, the woman’s death was directly attributable to the venereal disease communicated to her by the accused. On appeal, the accused’s sentence of four years’ imprisonment was reduced to 12 months’ imprisonment, with hard labour.

With respect to the elements specified in the section 253 offence, it appears on clinical grounds that a considerable proportion of persons having these diseases may in fact be unaware that they are infected. In many instances, either information is not volunteered by patients concerning the identities of their partners or, where this information is known, it is not listed in clinical records. According to the communicable disease specialists consulted by the Committee, the major obstacle in identifying sexually transmitted diseases is the persistent reluctance by physicians to report these cases and, in many instances, the provision of treatment without the benefit of laboratory examination of specimen cultures. These practices have become so widespread that the enforcement of section 253 of the *Criminal Code* has effectively ceased.

**Because this statute is ineffective in affording protection either for children and youths or adults, the Committee recommends that it be repealed.** In the following sections of this chapter, steps are recommended which we believe are warranted to provide better protection in this regard for children, youths and adults.

## National Statistics

National statistics on the incidence and prevalence of sexually transmitted diseases are assembled by the Bureau of Epidemiology of the National Department of Health and Welfare from reports on these conditions provided by provincial infectious disease services. While the Committee did not undertake a review of the organization of these provincial programs or of the various procedures followed in the identification and treatment of persons having these diseases, it is generally recognized by experts in this field that there are considerable variations across the country. Due to differences in how the provincial programs are structured and operated, sharply contrasting provincial rates of identification of these diseases are officially reported. There is no reason to suspect that these disparities in the reported rates are due to provincial variations in the actual distribution of sexually transmitted diseases.

Table 33.2

**Reported Gonococcal Infections in Children and Youths:  
Canada, 1980**

Province	Rates Per 100,000					
	Males			Females		
	0-4 Yrs.	5-9 Yrs.	10-14 Yrs.	0-4 Yrs.	5-9 Yrs.	10-14 Yrs.
Newfoundland	0.0	0.0	9.2	0.0	3.5	9.6
Prince Edward Island	—	—	—	—	—	—
Nova Scotia	—	—	—	—	—	—
New Brunswick	0.0	0.0	0.0	3.7	0.0	0.0
Quebec	2.9	0.0	2.0	3.0	1.4	5.0
Ontario	1.6	0.0	2.8	2.0	1.0	10.2
Manitoba	2.4	4.8	16.5	17.9	5.1	86.2
Saskatchewan	0.0	0.0	9.5	5.0	2.6	25.0
Alberta	1.1	1.2	11.3	11.4	14.7	61.5
British Columbia	2.0	1.0	1.9	3.3	4.4	22.2
Yukon	0.0	0.0	111.1	1,000.0	0.0	125.0
Northwest Territories	0.0	83.3	40.0	793.1	333.3	960.0

*Bureau of Epidemiology, Department of National Health and Welfare*

The national statistics given in Table 33.2 on the reported prevalence of gonococcal infections in children and youths for 1980 show how few cases of these conditions are reported officially and sharp provincial variations in these rates. In 1980, in Canada, a total of 340 cases of gonococcal infections was reported for children who were age 14 or younger. Of this total, 17.3 per cent were boys and 82.6 per cent were girls. For children of both sexes, the reported occurrence rose sharply with age.

Age	Number of Reported Gonococcal Infections in Canada, 1980	
	Boys	Girls
0 - 4 years	10	54
5 - 9 years	6	34
10 - 14 years	43	193

In Table 33.2, the 340 cases of gonococcal infections for children 14 years and under are given as rates per 100,000 persons (age specific) for the population. These results show that the provincial rates vary, in some instances by as much as several thousand per cent.



## Notifiable and Non-notifiable Infections

On the basis of its review and as documented in Tables 33.3 and 33.4, the Committee concluded that present provincial regulations and statutes concerning venereal disease control are inadequate. Only two of the diseases currently listed, syphilis and gonorrhea, are of serious public health significance, while others (see Table 33.4) are not considered (e.g., non-gonococcal urethritis and genital infections, genital herpes and certain complications of these such as neo-natal herpes).

**Table 33.3**

### **Notifiable Sexually Transmitted Diseases: Canada, 1984**

Reported by	Disease
All provinces	Chancroid Gonococcal Ophthalmia Neonatorum Gonococcal Infections
New Brunswick Nova Scotia	Granuloma Inguinale Lymphogranuloma Inguinale
Prince Edward Island	Gonorrhea, Genito-Urinary Gonococcal Ophthalmia

*Bureau of Epidemiology, Department of National Health and Welfare*

**Table 33.4**

### **Non-notifiable Sexually Transmissible Infections of Public Health Importance: Canada, 1984**

Notifiable in All Provinces, and Nationally, But Not Identified as "Sexually Transmitted"
<ul style="list-style-type: none"> <li>• Non-gonococcal Urethritis/Cervicitis</li> <li>• Trichomoniasis</li> <li>• Moniliasis</li> <li>• Genital Warts</li> <li>• Hepatitis</li> </ul>
Notifiable in British Columbia, Alberta, Ontario and Quebec, not Nationally
<ul style="list-style-type: none"> <li>• Acquired Immunodeficiency Syndrome</li> </ul>
Also Transmitted by Non-Sexual Modes
<ul style="list-style-type: none"> <li>• Herpes Genitalis</li> <li>• Neonatal Herpes</li> <li>• Hepatitis</li> <li>• Acquired Immunodeficiency Syndrome</li> </ul>

*Bureau of Epidemiology, Department of National Health and Welfare*

In order to obtain a better estimate of the actual occurrence of sexually transmitted diseases in Canada, the Committee recommends that the Office of the Commissioner in conjunction with federal and provincial health authorities establish an interdisciplinary advisory committee in order to develop surveillance and diagnostic criteria for all sexually transmitted infections. Once this list has been established, the diseases listed should be made reportable under the Provincial Acts and Regulations. The support of the Provincial Colleges of Physicians and their equivalents in each province should be actively sought to ensure compliance in reporting.

The maintenance of absolute confidentiality for infected individuals threatens the objectives of communicable disease control and prevention. These strategies form the bases of interrupting the continuing transmission of infection in Canadian society. They have fallen into disuse and should be reinstated and reinforced. It is possible to maintain relative confidentiality, while ensuring protection for all individuals. The application of this recommendation is of particular importance in the control of infection in children and youths, as well as in adults. The intention of this recommendation is to protect the rights of children and youths to receive treatment in situations where they may be unaware of the serious threat to their health and personal well-being.

## National Surveys

In several of the national surveys undertaken by the Committee, information was sought about the experience of sexually assaulted children who may have contracted a sexually transmitted disease as a result of the acts committed against them. The nature of the information obtained varied greatly in reliability and in the identification of the specific types of sexually transmitted diseases that may have been contracted.

In the National Population Survey, a random sample of persons was asked whether, as a result of having been sexually attacked, they had been hurt. In the listing of injuries, an item was included specifying: "got VD (sexual disease)". The results given in response to this question may not reflect the true occurrence of the number of these diseases that resulted from incidents of sexual assault, particularly for those conditions which may not have been recognized or detected. The information from this survey is valid, however, to the extent that it reveals whether persons who participated in the survey believed or knew that they had had a sexually transmitted disease, and whether they believed that the infection had resulted from their having been sexually assaulted.

In the case of similar information obtained in the other national surveys, it is recognized that the determination of whether these diseases had been contracted is limited by the timing and nature of the interventions that these services provided with respect to sexually assaulted children. In many of the cases investigated by the police, the information listed in the general occurrence

records of their investigations did not contain long-term follow-up information about these children and youths. If a child had contracted a venereal disease and had received medical treatment for this condition some time after the police had completed their investigation, these findings would not usually have been included in police files unless an investigation was still in progress.

The same problem is evident in the records of child sexual abuse maintained by child protection services. Generally, as noted in Chapter 28, *Provision of Child Protection Services*, the records of these agencies do not record detailed information about the findings of medical examinations of these children. Further, as in the instance of police files relating to sexually assaulted children, the incorporation of information about whether children had contracted sexually transmitted diseases depends upon when a child protection worker was in contact with a child in relation to when the assault occurred, and whether, during the time the case was still open in the files of an agency, if a medical examination had been undertaken.

The most reliable information about the nature of the sexually transmitted diseases contracted by sexually assaulted children was obtained in the National Hospital Survey. A limitation of these results is that relatively few such cases were reported in the National Hospital Survey and that there was no longitudinal follow-up concerning the long-term harms sustained. As the findings of the other national surveys show, only a small proportion of children who were sexually assaulted subsequently sought or received medical attention, and of this number, only a portion obtained such treatment as inpatients at a hospital.

## National Population Survey

The information on sexually transmitted diseases obtained in the National Population Survey, although the questions asked were limited in scope, is the first study of its kind for Canada that has sought to document the experience in this regard of a national sample of the Canadian population. While the findings obtained identify only a small number of cases of venereal disease resulting from sexual assault, if these results are projected to the Canadian population, then a sizeable number of persons, both children and adults, may have been involved in episodes of this kind, and as a result, may have contracted sexually transmitted diseases.

In the Committee's view, the significance of the findings obtained derives less from the actual number of cases identified than from the implications of these results for the need to undertake more comprehensive and detailed community surveys of these conditions, particularly since it is known that some types of undetected sexually transmitted diseases may result in long-term harms to the health of persons later in their lives.

A total of 38 out of 1006 females in the National Population Survey reported that they had been raped; of this number, five indicated that they had contracted a sexually transmitted infection (13.2 per cent). None of the



females who were 15 years-old or younger when the incidents had occurred said that she had contracted a venereal disease as a result of having been raped. Of the five cases in which this had happened, two females were between 16 and 17 years of age, one was under age 20 and two were adults. In these instances, because females are usually asymptomatic, it is unknown whether the infection may have been present for some time before the assault occurred, or had been transmitted by the assailant.

Of the 1002 males who participated in the National Population Survey, six reported that they had been victims of having a penis forced into their anus. In two of these incidents, both involving males who were 15 years-old or younger when the incidents had occurred, a sexually transmitted infection was reported to have been contracted.

The results of the National Population Survey show that 3.8 per cent of all females said that they had been raped, and one in 201 had been raped and had subsequently reported having contracted a sexually transmitted disease. Of the males in this survey, 0.6 per cent had been victims of an act of buggery, and of 1002 males, one in 501 had been a victim of this offence and had reported having contracted a sexually transmitted infection. When these proportions are prorated to the Canadian population, and assuming the validity of these findings, then a total of approximately 80,000 persons would be estimated to have contracted a venereal disease resulting from a sexual assault. Observations of this kind must be interpreted cautiously, for they are based on the experience of a small number of cases for which no medical confirmation is available. The findings, however, are based on the results of a representative sample of the Canadian population and, because of the asymptomatic nature of some of these conditions, the results are likely to represent an under-estimate rather than an over-estimate of actual occurrence.

As previously noted, certain types of sexually transmitted diseases may result in serious and long-term harms to the health of persons later in their lives. Not only do these diseases entail great misfortune and personal anguish for some patients but, to the extent that they remain undetected, a pragmatic concern is the considerable public costs which may be incurred in the treatment of the resulting complications. In this regard, the widespread practice of non-reporting to protect confidentiality has served to mask the extent to which children and youths are at medical risk.

Because of the extent of the sexual behaviour of Canadian boys and girls, a sizeable but unknown proportion is likely to contract sexually transmitted diseases. **In light of the potential complications or disabilities that these early contacts may entail for the future health of these children and youths, it is imperative, in the Committee's judgment, that more comprehensive and detailed information be obtained with respect to: the knowledge by children and youths about the signs of sexually transmitted diseases; the number, age and sex of children and youths who report that they have contracted these infections, and the age and sex of their partners; the steps taken to seek and**

**obtain pertinent medical attention; and the identification of long-term harms resulting from these diseases.**

### National Police Force Survey

In the National Police Force Survey, of girls who were 15 years-old or younger and who had been raped or who had been the victims of attempted rape, 15 were reported to have had vaginitis and eight had contracted gonorrhea. If these conditions are grouped together, then 3.8 per cent of these girls had contracted a sexually transmitted disease, some of whom had contracted gonorrhea (1.3 per cent).

A total of 91 cases of attempted buggery and buggery against boys who were 15 years-old or younger was reported in the National Police Force Survey. Of this number, five cases (5.5 per cent) were reported to have had an infected rectum.

### National Hospital Survey

In this survey, a total of 549 female patients presented to hospital, of whom 413 received a gynaecological examination. Of this group, 43 (10.4 per cent) were considered to have contracted a sexually transmitted disease and 17 were referred for a further follow-up assessment. Of the 74 male patients for whom information was obtained, seven (9.5 per cent) were referred for a follow-up assessment in relation to a sexually transmitted disease.

## Manitoba Study of Sexually Transmitted Diseases

On the basis of the information obtained concerning national statistics on the reported prevalence of sexually transmitted diseases, the senior officials who were responsible for the programs established to control these diseases in Manitoba and Alberta were contacted by the Committee. In the case of both programs, considerable effort has been made to develop special programs and means of liaison to identify and serve children who may be at risk of contracting these diseases. In Manitoba, for instance, close co-operation has been established with child protection services, and as a result of the several special measures taken, larger numbers of children having these diseases are identified. As a result of the way in which information was retained about persons treated, it was not feasible with respect to cases known to Alberta Social Hygiene Services to assemble information about the ages of children who had contracted these diseases with information pertaining to the ages of their suspected or known partners. As information of this type could be assembled by the Manitoba Department of Health, Sexually Transmitted Disease Control Division, a collaborative review by this Service and the Committee was undertaken

of the reported cases of sexually transmitted diseases contracted by children in 1980 and 1981.

In order to ensure confidentiality and accuracy in handling the case records of children for whom information had been obtained, a statistical profile was assembled of each case by the Control Division. This information was given to the Committee for statistical analysis. Provision was made in the profile for information, where available, on:

1. Age of the patient;
2. Sex of the patient;
3. Age of suspected/known partner;
4. Sex of suspected/known partner;
5. Association of patient and partner (e.g., family member, relative, friend, acquaintance, stranger);
6. Source of reporting of case (e.g., self-referral, community physician, clinic/hospital, police or community agency referral);
7. Type of sexually transmitted disease (diagnosis);
8. Number of known sexual partners;
9. Information on examination of sexual partner;
10. Types of treatment provided;
11. Notifications that were made (e.g., parents, family physician, clinic/hospital, police and/or community agency);
12. Whether the disease had been contracted as a result of a sexual assault of the child.

## Presenting Symptoms and Treatment

The Manitoba Department of Health survey of sexually transmitted diseases among children and youths identified 452 children with these conditions who were age 16 or younger. About four in five (79.6 per cent) patients were girls and the remainder (20.4 per cent) were boys. When the types of sexually transmitted diseases from which these children suffered are considered, for 15 girls under age 10, confirmation was made by a positive culture of *N. gonorrhoeae* (14 cases) and in one instance, by a positive smear. In two of these cases, girls under 12 months-old were involved; the cultures obtained from them were non-genital specimens (one ear, one conjunctiva), suggesting that these conditions resulted from nonsexual transmission of infection. The mother of one of these female infants was positive on culture, while the mother of the other child yielded a negative result.

Of the three boys who were under age 10, no information was available about the sex partners of two of these patients. In the two cases in which the identity of the partner was known, both had positive smears for *N. gonorrhoeae*: the patients were ages five (female) and 12 (male) respectively.

There were six cases in which gonococcal infections appear to have been contracted as a result of male homosexual contacts. The ages of the six boys



were: age nine (one); age 13 (one); and age 16 (four). One 16 year-old boy was bisexual, having had five male and two female sexual contacts. All of the other boys were reported to have had a single male partner. The 16 year-old bisexual patient had been treated twice during 1980-81. In the first examination, the infection was confirmed by urethral culture, and in the second examination, a pharyngeal culture was obtained. This patient's sexual partners were reported to be: males aged 16 (two), 19 and 29 years; and two females who were age 18. Confirmation of a gonococcal infection for the five boys who were reported to have had only one sexual partner was obtained by positive cultures for four cases and by positive microscopy in another. The ages of their partners were: 12 (a relative), 18, 21 and 22. The age of one partner was not reported.

Pelvic inflammatory disease is the most serious complication resulting from gonorrhea among young females. Because the major symptom of this condition is a form of abdominal pain which resembles other abdominal infections, the clinical identification of this disease may be difficult to make. Among the girls who were examined in the 1980-81 Manitoba study, a diagnosis was given for 229 patients (e.g., vaginal discharge, abdominal pain, pelvic inflammatory disease) or a method or place of diagnosis listed (e.g., type of contact, hospital, screening or follow-up). In 15 cases, a diagnosis of pelvic inflammatory disease was made. In addition to these cases, there were 14 patients who had "abdominal pain", a condition which may also have been a pelvic inflammatory disease. Without additional clinical information for these cases, no confirmation can be made. A review of the information about other patients suggests that in addition to the 29 cases noted, there may have been 25 more cases in which a pelvic inflammatory disease was suspected.

On the basis of the available information, it appears reasonable to conclude that about one in four female patients for whom a diagnosis was given in the Manitoba study had or was likely to have had pelvic inflammatory disease. These results cannot be generalized to the experience of all young Canadian girls and women who may have these diseases. However, if only a small fraction of these diseases were to occur, as indicated by the findings of the National Population Survey, then a sizeable number of Canadian females may be at considerable risk of complications resulting from these infections.

The prognosis for these young girls is unfortunate and bleak. Clinical experience indicates that further consequences are likely to include:

- Between 15 and 20 per cent will experience infertility in later life, a condition that may entail multiple hospital admissions and possible surgical intervention.
- Of the remainder, should these girls subsequently become pregnant, then in 14 instances an ectopic pregnancy may occur in which the fetus will be lost and in which the mother's life may be placed at risk.

## Association between Patient and Sexual Partner

Because of the nature of the information obtained in the Manitoba study, and the presumed reluctance of many patients to identify their sexual partners, the information obtained about the type of association between these persons was incomplete and, in some instances, inaccurate, particularly with respect to the involvement of family members, relatives and close friends.

In the Manitoba survey, there were six children for whom the suspected or known sexual partners were family or household members. One of these cases involved a boy of age nine whose suspected sexual partner was listed as a “relative”. The five girls whose sexual partners were suspected or known to be family or household members for whom positive smears were obtained, included:

- Girl age 4 — uncle and mother’s cousins
- Girl age 4 — mother’s common-law partner and his two sons
- Girl age 7 — three family members
- Girl age 10 — aunt, grandmother and grandfather
- Girl age 16 — mother’s common-law partner

The number of cases involving children who had sexually transmitted diseases which may have been contracted from family members is small, representing 1.1 per cent of the children in the study. **On the basis of the Committee’s findings from the several national surveys conducted, the results indicate that in cases of intercourse involving children and family members, testing is warranted to determine whether a sexually transmitted disease has been contracted.**

## Sexual Assault

Apart from a few cases where the inference could be drawn from the age of the child, the records of the children who were examined and treated in the 1980-81 Manitoba Study of sexually transmitted diseases did not yield information about the extent to which these children may have been the victims of sexual assaults. The absence of this information does not mean that such offences did not occur, but only that, within the scope of the information available, acts of this kind were not recorded. At the end of 1981, the Control Division arranged to notify provincial child protection services of all cases involving a child diagnosed as having gonorrhea or syphilis. The Control Division seeks to identify the source and transmission of the infection and the Child Protection Branch undertakes an assessment to determine whether the child is in a safe social situation.

# Legal Significance of Manitoba Study

The sexual abuse of children and young persons by means of assaultive or arguably *non-consensual* behaviour is examined elsewhere in this study. The findings from the Manitoba study provide an opportunity to examine sexual abuse where most of the conduct may be seen as *consensual* in fact despite any legal prohibitions. The ages of patients and partners as well as the numbers of partners give some idea of the sexual abuse of patients by their peers and by those considerably older. It is not known whether there are similar patterns in geographic areas other than that covered in the Manitoba study.

When the Committee was conducting its review, there were two different legislative proposals being considered which were intended to deal with sexual conduct with children that is not “assaultive” but that should be proscribed for other reasons. These proposals were contained in *Bill C-53*<sup>16</sup> and in the *Working Paper for Offences Against Young Persons*.<sup>17</sup> A central assumption of the proposals was that consensual sexual behaviour between young persons who are close in age is generally not harmful to the younger person and, accordingly, should not be proscribed by the criminal law. The research findings provide a means for testing the soundness of this assumption and they are considered in terms of:

- 1. The legal significance of instances involving a patient under 14, where the child’s sexual partner(s) was less than *three* years older;
- 2. The legal significance of instances involving a patient 14 or 15, where the child’s sexual partner(s) was less than *three* years older;
- 3. The legal significance of instances involving a patient 14 or 15, where the child’s sexual partner(s) was less than *five* years older; and
- 4. The legal significance of instances involving a patient 16. Patients in this age group would not be affected by the proposals. The research findings given are presented for purposes of comparison.

## Patients Under 14, Having a Sexual Partner Less Than Three Years Older

Of the partners who had sex with children 13 or younger (and for whom information on the partners’ ages was available), only two (5.0 per cent) were less than three years older than the child in question. In contrast, 95.0 per cent of the sexual partners of children age 13 or younger were more than three years older than the child, and all were males.

Children Under Age 14	Partner Less Than 3 Years Older	Partner More Than 3 Years Older
Male	1	—
Female	1	38
Total	2	38



These findings are significant in relation to the sexual assault provisions of the *Criminal Code* enacted in 1983 and to the provisions of the proposed *Bill C-53* and the *Working Paper*. Consensual heterosexual or homosexual conduct between persons, one of whom is under 14 and the other of whom is less than three years older than the younger person is exempted from the prohibitions in the sexual assault provisions of the *Criminal Code*.<sup>18</sup> However, the absolute prohibition in section 146(1) against sexual intercourse with females under 14, which was to have been repealed under *Bill C-53*, remains in the *Code*. So do buggery and gross indecency. The latter offences were to have been repealed by *Bill C-53*, but gross indecency was to have been re-enacted. Most of the sexual acts engaged in by the children under 14 involved heterosexual intercourse where the male partner was more than three years older than the female, and neither the sexual assault provisions of the *Code*, *Bill C-53*, nor the *Working Paper* would affect the culpability of these partners. Under *Bill C-53*, however, the incidents involving sexual partners who were less than three years older than the young patient would be exempted from the prohibition against sexual misconduct with a person under 14.

## Patients 14 or 15, Having a Sexual Partner Less Than Three Years Older

The findings on the ages of male partners of females 14 or 15 are significant for the legal changes proposed by *Bill C-53*. Sixty-eight of these partners were less than three years older than the female patient, while 90 of them were more than three years older. The ages of the 15 year-old females' sexual partners comprised a wide spectrum: two were 14 years-old; twelve were 15; twelve were 16; thirty were 17; eighteen were 18; thirteen were 19; five were 20; and thirty were 21 or older.

*Bill C-53* would repeal the prohibition against sexual intercourse with females 14 or more and under 16 in section 146(2) of the *Criminal Code*,<sup>19</sup> and would introduce the vague offence of "sexual misconduct" (which would, presumably, include consensual sexual intercourse with young girls).<sup>20</sup> Where a female is 14 or 15, however, and the sexual intercourse is consensual, *Bill C-53* provides a complete exemption from this offence to a partner who is less than three years older.<sup>21</sup> Accordingly, 68 of the 158 male sexual partners (43.0 per cent) would have a complete legal defence under *Bill C-53*, a defence which they do not enjoy under the present law. The health risks to the female, especially when her sexual partner has a communicable sexual disease, are, of course, independent of her partner's age.

Of the partners of male patients aged 14 or 15, nine were less than three years older than the patient, while four were more than three years older. As with the partners of female patients, the incidents involving the partners of male patients who were less than three years older would be exempted from the "sexual misconduct" offence in *Bill C-53*. However, as already indicated, the offence of gross indecency, which applied to the extent that these incidents involved homosexual acts, was to have been re-enacted by *Bill C-53*.

# Patients 14 or 15, Having a Sexual Partner Less Than Five Years Older

The study found that, of the sexual partners of the 14 and 15 year-old patients for whom information was available:

1. 13 sexual partners of male patients were less than five years older than the male in question and none was more than five years older;
2. 113 sexual partners of female patients were less than five years older than the female in question and 45 were more than five years older.

The *Working Paper* states that “‘sexual exploitation’, in relation to a young person, means any sexual conduct where the young person is involved as a participant or otherwise”<sup>22</sup> and defines “sexual conduct” as including “any touching of a sexual nature or any sexual performance, but does not include conduct of an affectionate nature that is normal in a family context”.<sup>23</sup> Accordingly, “sexual exploitation” would presumably include sexual intercourse with a young female.<sup>24</sup> The *Working Paper* provides that every one who engages in the sexual exploitation of a person 14 and under 16 is guilty of an indictable offence and is liable to imprisonment for 10 years.<sup>25</sup> It further provides, however, that no one shall be guilty of this offence if he establishes that at the time the sexual incident took place, he was either under 16 years of age<sup>26</sup> or he is less than five years older than the complainant.<sup>27</sup> On their face, the proposals in the *Working Paper* would exempt three-quarters of the cases (126 of the 171 instances) cited in the study in which the sexual partners were less than five years older than the 14 and 15 year-old patients from the offence of sexual exploitation of a person between 14 and 16.

## Sexual Partners of Patients 16 Years-old

Information was obtained in the study on ages of sexual partners (where known) of the 16 year-old patients. Some 118 male sexual partners (those age 18 or older) of the 16 year-old female patients could potentially have been charged with the “seduction” offence in section 151 of the *Criminal Code*, provided that the female in question was of previously chaste character. All of the partners of the 16 year-old female and male patients could potentially have been charged with the offence of contributing to juvenile delinquency, and the partners of the 16 year-old male patients could have been charged with the offences of buggery or gross indecency, depending on the circumstances.

Children Aged 16 Years	Partner Aged 16 or 17	Partner Aged 18, 19 or 20	Partner Aged 21 or Older
Male	34	16	8
Female	44	62	56
Total	78	78	64

## Multiple Partners

Some of the young females about whom information was obtained in the survey were reported to have had intercourse with four, five and six or more partners within short periods of time. In this regard, it is relevant to recall that the proposed changes to the *Criminal Code* would apply to these circumstances as well as to situations involving single partners. The findings show that cases of multiple partners involved a range of ages in partners. If it is “normal” for these females to have “friends” with a range of ages and the physical harms are independent of the partners’ ages, there would appear to be no justification for distinguishing among these partners according to age for the purpose of determining criminal responsibility. The findings on multiple partners show the arbitrariness of removing the protection of the criminal law where the partner is close in age to the patient.

Of the 293 girls in the Manitoba study, 129 had multiple partners. However, the ages were only known for 106 girls and for 68 of their 293 partners. About one in three girls (36.2 per cent) had multiple partners, as compared with about one in six boys. Over half (54.5 per cent) of the girls 12 and 13 had three or four partners. Almost one-quarter (24.4 per cent) of the girls 14 and 15 had three or four partners; and 13.3 per cent had five or six partners. Almost one-tenth (9.4 per cent) had more than six partners. A little more than one-quarter (26.0 per cent) of the 16 year-old girls had three or four partners, and two per cent had more than six partners.

Table 33.5

Girls Age 16 and Under Treated for  
Sexually Transmitted Diseases Who Had More Than One Partner

Age of Patients	Number of Girls	Number of Partners	Age Range of Partners	Average Age of Partners	Proportion of Girls Having Partners Age 21 and Older
Under age 14	11	26	15-75	30.7	36.4
14 — 15 years	45	126	14-35	18.2	28.9
16 years	50	116	15-36	20.6	54.0
TOTAL	106	268	14-75	20.5	41.5

The age range of partners of the 12 and 13 year-old girls having multiple partners was 15-75 years. For 14 and 15 year-old girls, it was 14-35 years, and for 16 year-old girls it was 15-36 years. The average age of the partners was 30.7 years for girls of 12 and 13; 18.2 years for girls 14 and 15; and 20.6 years for 16 year-old girls. The numbers of multiple partners and the range of ages of these partners belies any assumption that the sexual partners of young females



can conveniently be grouped into two discrete legal categories, namely: male partners close in age, in which case the sexual activity is “experimental” and should accordingly fall outside the prohibition of the criminal law; and male partners substantially older than the female, in which case the sexual activity should be proscribed on grounds of public policy. The reality appears to be that a number of younger as well as older males take their sex where they can get it, and the overall picture in these multiple partner cases is one of casual sexual exploitation.

The proportion of girls having one or more partners aged 21 and older was 41.5 per cent. For girls less than 14, it was 36.4 per cent; for those 14 and 15, it was 28.9 per cent; and for those 16, it was 54.0 per cent. However, for girls under 14, of 26 partners, 16 were between 15 and 20 years of age. For girls 14 and 15, of 126 partners, 109 were between 14 and 20.

The provisions of the proposed *Bill C-53* and the *Working Paper* would decriminalize consensual sexual intercourse with young girls where the girl is under 14 and the partner is less than three years older, and where the girl is 14 or 15 and the partner is less than three (*Bill C-53*) or five years (*Working Paper*) older than the female. The findings on females with multiple partners are similar to those with respect to the application of the proposed *Bill C-53* and the *Working Paper*. For 11 girls 12 and 13 years of age having 26 partners, none of the partners was less than three years older. For girls of 14 and 15, 40.5 per cent of the partners were less than three years older. Almost one-quarter (24.1 per cent) of the partners of the 16 year-old girls were aged 16 or 17, which means that they could not have been charged with the “seduction” offence in section 151 of the *Criminal Code*. The general findings show a similar figure. A little more than one-quarter (27.2 per cent) of the partners of the 16 year-old girls were aged 16 or 17.

**Table 33.6**  
**Difference in Age Between Female Patients**  
**Treated for Sexually Transmitted Diseases and**  
**Ages of Multiple Partners**

Age of Patient	Proportion of Partners Less Than Three Years Older	Proportion of Partners Less Than Five Years Older	Proportion of Older Partners Under Age 18
	Per Cent	Per Cent	Per Cent
Under age 14	0.0	15.4	42.3
14 – 15 years	40.5	72.2	50.0
16 years	39.7	59.5	24.1

The findings on the partners of 16 year-old girls are given mainly for purposes of comparison (the offence of seduction in section 151 of the *Criminal*

*Code* is rarely charged). With respect to the partners of girls 14 and 15, the enactment of the legislation proposed in *Bill C-53* and the *Working Paper* would remove the criminal law prohibition against sexual intercourse with young girls from a substantial proportion of their partners who were close in age.

There is currently no defence to a charge of sexual intercourse with young girls based on the closeness in age of the accused to the complainant. The proposals in *Bill C-53* and the *Working Paper* to create defences based on closeness in age are an attempt: to ensure that the provisions of the *Criminal Code* apply equally to persons of both sexes;<sup>28</sup> and to de-emphasize the prohibition against sexual intercourse, by subsuming sexual intercourse under a general offence of sexual exploitation which may be committed by males and females and which may include other types of sexual conduct less likely to pose health risks. The exception for partners close in age would exclude these other types of conduct.

Underlying the proposed exception for partners close in age may be a concern that despite the health risks to the female, the punishment is too severe where the partner is close in age and there is evidence of genuine affection. In circumstances where there is no evidence of sexual abuse other than the age of the female, there should be greater flexibility available in the application of the sanction. It is at the sentencing stage that the judge can determine what weight should be given to the fact that the partner was close in age to the young girl. It has been shown throughout the findings presented in the Report that there is a great deal of discretion exercised in the law enforcement process. The findings from the National Police Force Survey indicate that very few cases of the type under discussion are reported to the police. Where they are, perhaps by angry parents, the prosecutor may decide that in the circumstances it is not appropriate to proceed any further with the case. Where the prosecutor decided to proceed, male partners who were close in age were usually charged under the provisions of the *Juvenile Delinquents Act* (replaced by the *Young Offenders Act*). Under these Acts, the judge has a wide range of alternatives to incarceration. The sanction can be selected to suit the circumstances. Under the *Juvenile Delinquents Act*, the case could be adjourned indefinitely, subject to being brought on again if the juvenile did not comply with the conditions set by the court. Under the *Young Offenders Act*, the young offender can receive an absolute discharge, possibly with a warning, or probation, the completion of which has the same effect as a conditional discharge. All young persons up to 18 years of age are dealt with under the *Young Offenders Act*.

Where an accused was just over the then current Ontario juvenile age of 16, but was close in age to the girl who was less than a month away from her fourteenth birthday, a conviction in adult court under the *Criminal Code* resulted in the imposition of a suspended sentence together with a year's probation.<sup>29</sup> Section 662.1(1) of the *Criminal Code* provides for an absolute and a conditional discharge. However, section 146(1) of the Code provides a maximum punishment of imprisonment for life, and section 662.1 (1) cannot be used if the offence is punishable by imprisonment for 14 years or for life. It



would be advisable to reduce the maximum punishment under section 146 in order to make an absolute or a conditional discharge available in cases where the partner is close in age and there is no other evidence of exploitation.

Because in the area of sexual offences against children the criminal law is not just morally based, and serves a protective function against specific health risks, the law must include all cases which may produce the risks in order to be effective. But comprehensiveness does not preclude appropriate disposition by the legal process, which should provide flexibility in appropriate circumstances. In view of the findings, the Committee believes that consideration should be given to including specific guidelines in the *Young Offenders Act* for dealing with such youths.

The Committee recommends maintaining the prohibition against sexual intercourse with female persons under 14 in section 146(1) of the *Criminal Code*. The Committee has also concluded, on the basis of the findings of the present study, and pending the obtaining of more complete information on the sexual abuse of young females and the attendant health risks, that the prohibition in section 146(2) against sexual intercourse with female persons 14 or more and under the age of 16 should be maintained. However, sections 146(2)(b) [complainant must be of previously chaste character] and 146(3) [court may find accused not guilty if he is not more to blame] are inappropriate to the offence and should be repealed. The Committee recommends that should an analysis of more complete information on the sexual abuse of young females not indicate significant attendant health risks, consideration should be given to repealing the prohibition against sexual intercourse in section 146(2).

## Summary

1. In 1981, there were 1206 live births to girls age 15 and younger.
2. In 1981, 1806 girls age 15 and younger had therapeutic abortions.
3. The existing system for the medical identification and classification of sexually transmitted diseases requires revision with respect to the more detailed and co-ordinated listing of these conditions.
4. The present provincial statutes and regulations concerning venereal disease are inadequate. Only two of the diseases currently listed are of serious public health significance while others are not considered.
5. In the National Population Survey, one in 201 females who had been raped and one in 501 males who had been a victim of an act of buggery had contracted sexually transmitted diseases.
6. In the National Police Force Survey, one in 18 girls aged 15 years or younger who had been raped and about one in 10 boys in the same age category who had been a victim of an act of buggery were reported to have contracted a sexually transmitted disease.
7. In the National Hospital Survey, 10.4 per cent of females and 9.5 per cent of males were considered to have contracted a sexually transmitted disease.



8. In 1980, the federal Bureau of Epidemiology reported 340 cases of gonococcal infections among children age 14 or younger. The rates of these reported cases varied substantially between provinces.
9. In the 1980-81 Manitoba Study of sexually transmitted diseases in which information was given for 452 children who were 16 or younger, it was found that:
  - (i) the ratio of girls to boys was more than 4:1;
  - (ii) on the basis of available information, it appears that about one in four instances of gonococcal infections was likely to have pelvic inflammatory disease; and
  - (iii) between 15-20 per cent of these patients may experience infertility in later life and a number of the girls will likely have ectopic pregnancies in the future.
10. In five cases involving children having sexually transmitted diseases, their partners were reported to have been relatives or family members.
11. With respect to the ages of the children and their partners, the study found that:
  - (i) of children under age 14, 95 per cent of older partners were more than three years older;
  - (ii) of children who were 14 and 15 years-old, 45.0 per cent of their partners were less than three years older;
  - (iii) of children who were age 16, about a third of their partners (35.5 per cent) were age 16 but less than age 18; and
  - (iv) for all children for whom the ages of their partners were reported, 25.1 per cent of their partners were adults age 21 or older.

**On the basis of its review, the Committee recommends that section 253 of the *Criminal Code* be repealed. In its place, we recommend: that provincial health regulations and statutes be sharply strengthened; that more effective surveillance and diagnostic criteria be developed; that extensive research be undertaken to obtain necessary information; and that information about the health risks of those diseases be incorporated in the national program of public education and health promotion recommended elsewhere in the Report.**

**The Committee recommends that the Office of the Commissioner, in conjunction with the Department of Justice, the Department of National Health and Welfare in consultation with the provinces and non-governmental agencies appoint an expert interdisciplinary advisory committee having assigned responsibilities:**

- 1. To conduct comprehensive research at a national level to document the known prevalence of sexually transmitted diseases contracted by children and youths and to assess the health risks involved.**

2. To develop ways of collecting information in a standard fashion across jurisdictions with regard to the occurrence of sexually transmitted disease, for children and youths under the age of 16 years.
3. To advise on the updating of the group of sexually transmitted disease protocols of standard and expected treatment practice, and separately advise on which of these infections should be made reportable in relation to cases involving children and youths under the relevant provincial statutes and regulations, and that in this regard, the full participation and co-operation of the Provincial Colleges of Physicians and Surgeons, and their equivalents, be sought to take an active role to encourage compliance in reporting.
4. To review the classification of sexually transmitted diseases and to make recommendations in relation to the modernization of the existing categories used in medical and hospital information systems across Canada.
5. To undertake a national survey of the experience and knowledge of children, youths and adults about sexually transmitted diseases and pregnancy, and to make recommendations with respect to the development of programs of public education and health promotion focussing upon the more effective provision of preventive and treatment services.

In view of the findings of the present study on the health risks to young persons of pregnancy and sexually transmitted diseases, the Committee recommends that:

1. Section 146(1) of the *Criminal Code* be retained, and that the maximum punishment for this offence be changed to a sentence of less than 14 years' imprisonment.
2. Section 146(2) be retained, but that sections 146(2)(b) and 146(3) of the *Criminal Code* be repealed.
3. Section 140 of the *Criminal Code* be amended to specify the age of 16 years instead of the present age of 14 years.
4. Section 147 of the *Criminal Code*, which states that no male person shall be deemed to commit an offence under section 146 while he is under the age of 14 years, should be repealed. This provision is a legal anachronism, and no longer serves any useful purpose. The relevant age should be the general age of criminal responsibility, which is set at 12 in the *Young Offenders Act*.

The Committee considers that the proposed amendments to section 146 constitute a threshold legal means of providing needed protection for children and youths for the risks associated with pregnancy and sexually transmitted diseases. We believe that the proposed amendment of the law, by itself, will accomplish little unless it is accompanied by the undertaking of national surveys of the prevalence of and the health risks associated with these conditions, and by the provision of information necessary to make young persons and their parents fully aware of these risks.

## References

### Chapter 33: Live Births, Therapeutic Abortions and Sexually Transmitted Diseases

- <sup>1</sup> United Kingdom. *Report of the Departmental Committee on Sexual Offences against Young Persons*. London: H.M.S.O., Cmd. 2561, 1925, pp. 12-13, 25-26.
- <sup>2</sup> *Ibid.*, pp. 25-26.
- <sup>3</sup> Canada. Statistics Canada. *Vital Statistics. Volume 1. Births and Deaths, 1981*. Ottawa: Supply and Services Canada, 1983, pp. 6-7.
- <sup>4</sup> Canada. Statistics Canada. *Therapeutic Abortions, 1981*. Ottawa: Supply and Services Canada, 1983, pp. 65-66.
- <sup>5</sup> *Ibid.*, p. 114.
- <sup>6</sup> Based on Statistics Canada, *supra*, note 4, p. 79.
- <sup>7</sup> *Ibid.*, pp. 100-101.
- <sup>8</sup> *Ibid.*, p. 103.
- <sup>9</sup> *Ibid.*, p. 136.
- <sup>10</sup> Canada. *Report of the Committee on the Operation of the Abortion Law*. Ottawa: Supply and Services Canada, 1977, p. 348.
- <sup>11</sup> Ontario. *Report of the Commission of Inquiry into the Confidentiality of Health Information in Ontario*, Volume 3. Toronto: Queen's Printer for Ontario, 1980, pp. 73-113.
- <sup>12</sup> *An Act to amend the Criminal Code*, S.C. 1919, c. 46, s. 8.
- <sup>13</sup> *R. v. Clarence* (1888), 22 Q.B.D. 23.
- <sup>14</sup> See *Re Keenan and The Queen* (1979), 57 C.C.C. (2d) 267 (Que. C.A.), on the issue of judicial interim release of an accused suffering from venereal disease and charged as a "found-in" under s. 193(2) of the *Cr. Code*.
- <sup>15</sup> (1926), 45 C.C.C. 236 (Sask. C.A.).
- <sup>16</sup> *Bill C-53* received first reading in the House of Commons on January 12, 1981, but was not enacted. It was intended to deal with both assaultive sexual offences and sexual offences against young persons.
- <sup>17</sup> The *Working Paper for Offences Against Young Persons* is a discussion paper prepared by the federal Department of Justice dealing with sexual offences against children, including the use of children in the making of pornography. It revises some of the provisions of *Bill C-53*.
- <sup>18</sup> *Cr. Code*, s. 246.1(2).
- <sup>19</sup> *Bill C-53*, clause 5.
- <sup>20</sup> *Ibid.*, clause 6.
- <sup>21</sup> *Ibid.*, clause 6, proposed new s. 167(2)(b).
- <sup>22</sup> *Working Paper*, clause 1, proposed new s. 137.1.
- <sup>23</sup> *Ibid.*
- <sup>24</sup> Clause 3 of the *Working Paper* provides for the repeal of s. 146 of the *Cr. Code*.
- <sup>25</sup> *Working Paper*, clause 1, proposed new s. 137.3.
- <sup>26</sup> *Ibid.*, clause 1, proposed new s. 137.3(2)(a).
- <sup>27</sup> *Ibid.*, clause 1, proposed new s. 137.3(2)(b).
- <sup>28</sup> Explanatory note to *Bill C-53*, p.1(a).
- <sup>29</sup> *Regina v. Stevens* (1983), 5 C.R.R. 139 (Ont. C.A.) and n, leave to appeal to the Supreme Court of Canada granted June 6, 1983 (S.C.C.).





# Chapter 34

## Genetic Risks of Incest

In addition to religious and social concerns, one of the reasons for the almost universal prohibition of incest (in Canada, the prohibition is in section 150 of the *Criminal Code*\*) is that over the centuries it has been observed that the offspring of such matings are more likely than other children to display severe abnormalities or mental retardation. Extensive studies on animals and humans have demonstrated that mortality and morbidity are increased, and that growth and vigour are decreased, in the first-generation offspring of closely consanguineous parents, as compared with offspring of unrelated parents.

In this chapter, the genetic risks to children of incest are reviewed with respect to the likelihood of their experiencing more hereditary disabilities than children born from other types of parents and a synopsis is given of the findings of a number of research studies which have dealt with these issues. A glossary of genetic terms and phrases is provided as a guideline for non-geneticists.

### Risks of Defects in the General Population

Not every couple is fertile, not every conception leads to a live birth and not every liveborn child is normal. On the contrary, one child in 30 in the general population has some significant handicap. Examples of some of the risks faced, based on a summary by Harper<sup>1</sup> modified on the basis of recent Canadian vital statistics, are listed below. These statistics serve as a baseline against which the risks to children of incest can be assessed.

#### Basic Risks for the General Canadian Population

- |  |         |
|--|---------|
| • Risk that a couple will be infertile | 1 in 10 |
| • Risk of spontaneous abortion         | 1 in 8  |

\*150 (1) Everyone commits incest who, knowing that another person is by blood relationship his or her parent, child, brother, sister, grandparent or grandchild, as the case may be, has sexual intercourse with that person.

(4) In this section, “brother” and “sister”, respectively include half-brother and half-sister.

• Risk of perinatal death	1 in 80
• Risk of death in first year of life after first week	1 in 200
• Risk of a serious physical or mental defect present at birth	1 in 50
• Risk of a significant handicap apparent in early childhood	1 in 30

**Figure 34.1**  
**Glossary of Genetic Terms\***

**Autosomal.** Determined by a gene on one of the 22 pairs of autosomes (not the sex-chromosomes).

**Autosomal Dominant.** Pattern of inheritance in which the autosomal gene responsible is on only one chromosome of a pair, matched with a normal partner gene.

**Autosomal Recessive.** Pattern of inheritance in which the autosomal gene responsible must be on both chromosomes of a pair.

**Carrier.** An individual who is heterozygous for a normal gene and an abnormal gene that is not expressed phenotypically, though it may be detectable by appropriate laboratory tests.

**Coefficient of Consanguinity.** The probability that an individual has received both alleles of a pair from an identical ancestral source; or the proportion of loci at which he is homozygous.

**Chromosome.** When a cell divides, the nuclear material (chromatin) loses the relatively homogeneous appearance characteristic of non-dividing cells, and condenses to form a number of rod-shaped organelles which are called chromosomes (chromos, colour, soma, body) because they stain deeply with certain biological stains.

**Consanguinity.** Relationship by descent from a common ancestor.

**Empiric Risk.** Estimate that a trait will occur or recur in a family based on past experience rather than on knowledge of the causative mechanism.

**Gene.** Units of genetic information (genes) are encoded in the deoxyribonucleic acid (DNA) of the chromosomes.

**Heterozygous.** An individual who has two different alleles, one of which is the normal allele, at a given locus on a pair of homologous chromosomes.

**Homozygous.** An individual possessing a pair of identical alleles at a given locus on a pair of homologous chromosomes.

**Inbreeding.** The mating of closely related individuals. The progeny of close relatives are said to be inbred.

**Multifactorial.** Determined by multiple factors, genetic and possibly also nongenetic, each with only a minor effect.

**Mutation.** A permanent heritable change in the genetic material.

**X-linked.** Pattern of inheritance of genes on the X chromosome.

\*Thompson, J.S. and M.W. Thompson, *Genetics in Medicine*, 3rd ed., Philadelphia: Saunders, 1980.



# Genetic Principles

To review briefly the basic facts about the elements of human genetics: humans, like other sexually propagating organisms, have a double inheritance, receiving from each parent a full set of 23 chromosomes with their specific content of genes. In turn, each child receives a copy of one member of each of the 23 pairs; it is purely a matter of chance which one of any pair the child receives. Fertilization (the union of an egg and a sperm) restores the double quota. The genes, of which humans probably have about 50,000 pairs altogether, contain in coded form the blueprint for the production of all the structural and functional components of the organism.

Genetic defects can be caused by a number of mechanisms involving mutational changes in single genes (Mendelian or single-gene inheritance), by inappropriate combinations of many genes with small individual effects, and also in some cases, affected by environment (multifactorial inheritance) and alterations of chromosomal number or structure. Certain environmental factors can increase the risk of birth defect, in the absence of any specific genetic mechanism.

Almost all of the defects which are more common in children of consanguineous parents (“inbred children”) than in children of unrelated parents (“outbred children”) are of two main kinds: many are rare traits determined by single genes with autosomal recessive inheritance, and others are abnormalities (malformations or mental retardation) with multifactorial inheritance. These types of disorders reflect the two major genetic effects of inbreeding.

1. An increase in the probability that the child will inherit some rare autosomal recessive gene in double dose, thus causing a major defect.
2. An increase in the variance of the genetic liability to multifactorial conditions, thus increasing the risk of common congenital malformations and of mental retardation.

Autosomal recessive disorders are caused when both members of a gene pair are abnormal, each parent having transmitted the same abnormal gene to their child. In this case, the affected child is homozygous and both parents are usually heterozygous for the abnormal gene (“carriers”), although occasionally, one or both may be homozygous. Autosomal recessive conditions can occur only when a child inherits two copies of a particular abnormal gene, one from each parent. It is generally agreed in genetic research on the basis of human population studies that most persons are heterozygous for one or more genes which have little or no effect in heterozygotes, but which would be lethal if they were homozygous.<sup>2</sup> If one parent is a carrier of such a gene, the other parent is much more likely to carry the same gene if the parents are related by descent than if they are unrelated. Thus, though the same autosomal recessive conditions can affect either inbred or outbred children, there is a higher risk that they will occur when the parents are related.

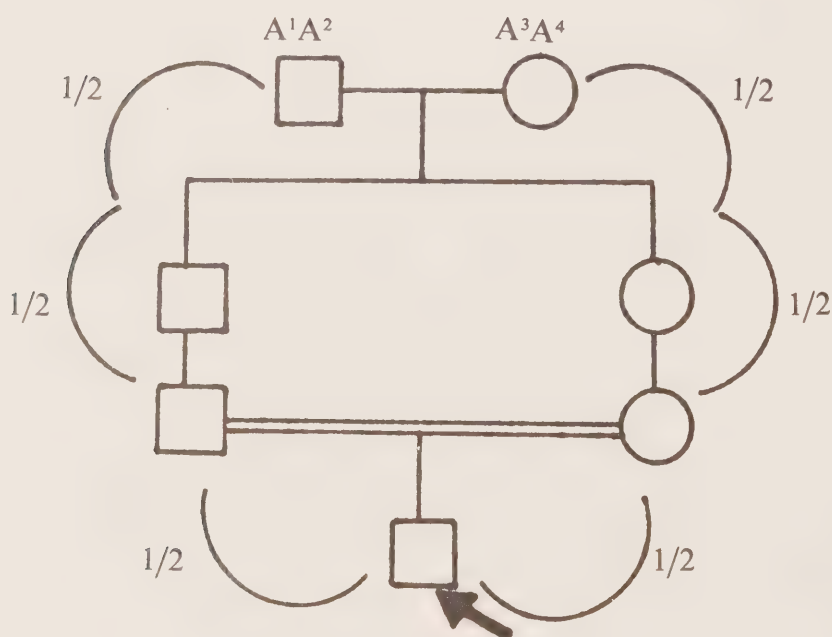
Individually, the numerous autosomal recessive diseases are all quite rare. Cystic fibrosis, which affects one in every 2000 children in Canada, is perhaps the most common such disease of this kind, although worldwide, certain blood disorders (sickle cell anemia and thalassemia) occur even more frequently. Many diseases with the autosomal recessive pattern of inheritance are exceptionally rare in the general population. Since heterozygotes are usually symptomless, as a rule the only way parents learn that they are heterozygous is by having an affected child.

An important feature of autosomal recessive inheritance is that heterozygotes are much more common than homozygotes. For example, although only one child in 2000 is homozygous for cystic fibrosis, almost one parent in 20 is heterozygous for the gene. Even for a much rarer condition, such as the classic form of phenylketonuria which has a population frequency in Ontario of about one in 30,000 births, more than 1 per cent of the population is heterozygous.

Although the general risk of being a carrier is high, it is much lower than the risk that a close relative of a carrier will also be a carrier. To give an example: if a woman is a carrier of albinism, the risk that her child will be an albino is only about one in 300 if the child's father is an unrelated person, but it is one in 32 if the father is a first cousin of the mother and one in eight if the father is the mother's brother or her father. Other types of genetic disorders (autosomal dominant or X-linked single-gene traits, or chromosomal defects) contribute little to the increased genetic risk for offspring of close relatives.

## Measurement of Inbreeding

For formal analysis of inbreeding effects, geneticists use the inbreeding coefficient,  $F$  for short, which measures the closeness of a relationship in terms of the probability that both members of any gene pair in the child are identical by descent.



Chance:

$$A^1A^1 = 1/64$$

$$A^2A^2 = 1/64$$

$$A^3A^3 = 1/64$$

$$A^4A^4 = 1/64$$

$$F = 1/16$$

To illustrate how  $F$  is calculated, the accompanying sketch shows the child of a first cousin mating.

At any specific gene locus, the child's great-grandparents have two genes each, or four in all. They are labelled  $A^1$ ,  $A^2$ ,  $A^3$  and  $A^4$  in the figure. For  $A^1$  to be homozygous in the child, it must be passed from great-grandfather to grandfather to father to child, *and* from great-grandfather to grandmother to mother to child. The probability that  $A^1$  will be transmitted (rather than its partner) is  $1/2$  for each step, altogether  $(1/2)^6$  or  $1/64$ . But there are four ways in which the child can be homozygous for a gene present in one of his or her parents' common grandparents:  $A^1A^1$ ,  $A^2A^2$ ,  $A^3A^3$  or  $A^4A^4$ . His or her inbreeding coefficient is therefore  $4(1/2)^6$  or  $1/16$ .

Several types of consanguineous mating are shown in Figure 34.2, and the corresponding degrees of relationship and inbreeding coefficients are given in Table 34.1. Theoretically, the genetic risk to the offspring of a consanguineous marriage is proportional to the inbreeding coefficient; in other words, the risk is twice as high for an uncle-niece mating and four times as high for a parent-child or brother-sister mating as for a first-cousin mating. The studies of consanguineous matings reported in the medical genetics literature, in general, support this theoretical viewpoint.

## Genetic Effects of Consanguineous Mating

### Offspring of Cousin Matings

Risks to children of cousin matings have been reported for a number of populations. The most extensive studies of this kind were those undertaken in Japan after World War II as an offshoot of studies of the children born to parents exposed to the atomic bombing of Hiroshima and Nagasaki.<sup>3-5</sup> The frequency of consanguineous marriage is relatively high in Japan, at least by Western standards. In the study population at the time of the inquiry, between 4 and 5 per cent of all marriages were between first cousins. The studies compared the offspring of first cousins, first cousins once removed, second cousins and unrelated parents. The findings showed that inbreeding increased the frequency of major congenital malformations, and of mortality, especially in the first nine months of life. The differences, though statistically significant, were not large. Major defects had an approximate occurrence of 8.5 per cent in the offspring of unrelated parents and 11.7 per cent in the offspring of first cousins. The proportion of infant deaths was 3.5 per cent in liveborn children of unrelated persons and 5.5 per cent in children of first cousins. Achievement in school was slightly depressed in the children of the inbred matings, the difference indicating that their average intelligence quotient was about six points lower than that of the comparison group. There was also evidence that inbred children had an increased susceptibility to infection.

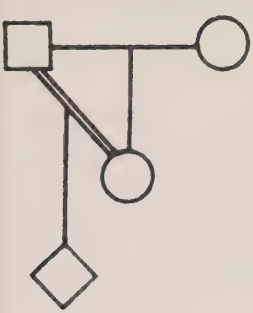


**Table 34.1**  
**Types of Consanguineous Matings and Consequences for the Offspring**

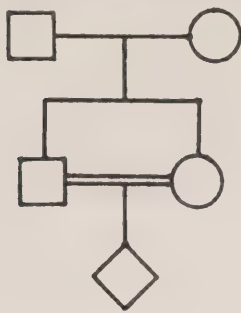
Category of Mating	Degree of Biological Relationship	Proportion of Genes Shared by Mates	(Coefficient of Inbreeding of Child)	Risk that Child will be Homozygous for a Particular Recessive Gene carried by one Parent
Parent/child	1st Degree	1/2	1/4	1/8
Brother/sister (including twins)	1st Degree	1/2	1/4	1/8
Brother/half sister	2nd Degree	1/4	1/8	1/16
Uncle/niece or aunt/nephew	2nd Degree	1/4	1/8	1/16
Grandparent/grandchild	2nd Degree	1/4	1/8	1/16
Half uncle/niece (or similar combination)	3rd Degree	1/8	1/16	1/32
First cousins	3rd Degree	1/8	1/16	1/32
Double first cousins (all four grandparents in common)	2nd Degree	1/4	1/8	1/16
Half first cousins (one grandparent in common)	4th Degree	1/16	1/32	1/64
First cousins once removed	4th Degree	1/16	1/32	1/64
Second cousins	5th Degree	1/32	1/64	1/128

**Figure 34.2**

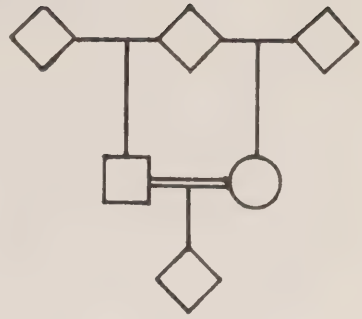
**Types of Consanguineous Matings**



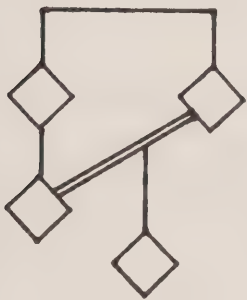
Parent-Child



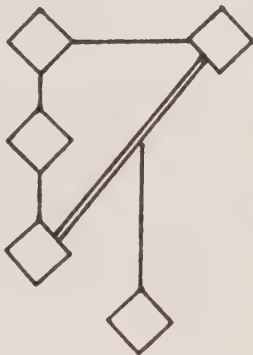
Brother-Sister



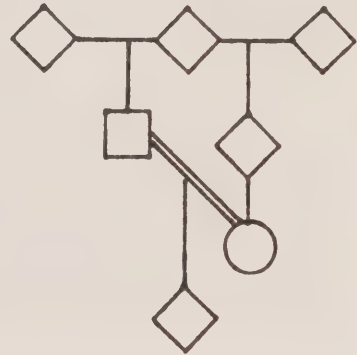
Brother-Half Sister



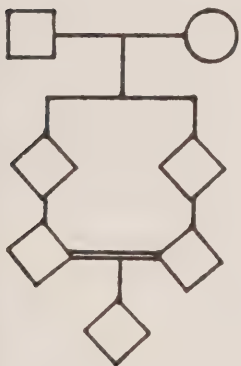
Uncle-Niece or  
Aunt-Nephew



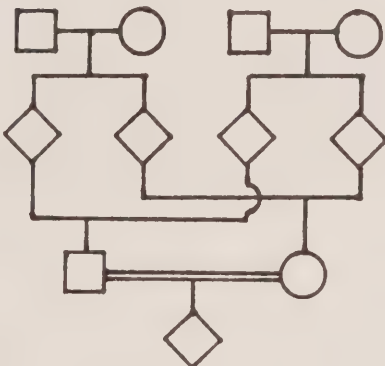
Grandparent-Grandchild



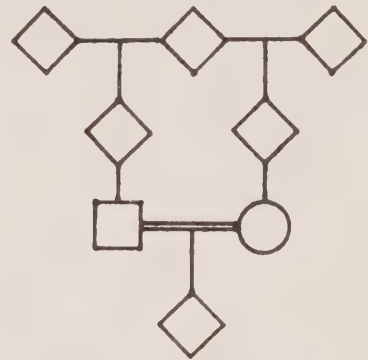
Half Uncle-Niece



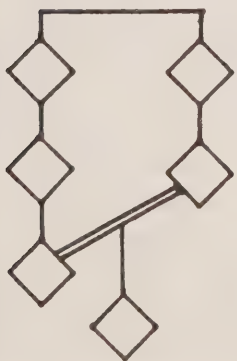
First Cousins



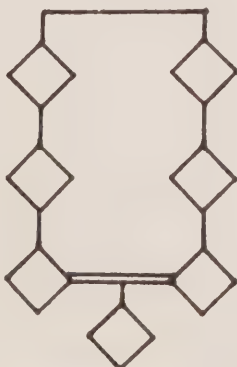
Double First Cousins



Half First Cousins



First Cousins Once Removed



Second Cousins

Legend



male



female



either male or female



consanguineous mating

Other variables measured having no difference or only a slight difference between the inbred and outbred children were: the frequency of stillbirths; physical growth and development; dental characteristics; and neuromuscular status.

Although other studies of the effects of consanguinity<sup>6-12</sup> agree in general that there is a small increase in empirical risk of mortality, severe abnormality or retardation in the offspring, the findings of these studies vary considerably with respect to the magnitude of the risks. A generally accepted figure, one used by many medical geneticists for the purposes of genetic counselling, is that the increased risk (above the baseline risk to any child) for the offspring of first-cousin parents is 3 per cent, and for the offspring of first cousins once removed or second cousins, it is about 1 per cent.<sup>13</sup> More distant consanguineous matings are not considered to differ genetically from so-called "random matings".

Fraser and Biddle approached the estimate of consanguinity effects by using records on consanguineous couples ascertained through a child with an abnormality, and correcting for bias by measuring the frequency of conditions other than that through which the matings were ascertained.<sup>14</sup> These researchers analyzed the experience of 58 families with first-cousin parents, 27 with second-cousin parents and 85 unrelated controls. There was a significant increase in the proportion of infant deaths occurring below one year of age in the consanguineous children (8.9 per cent) as compared with that of the controls (3.5 per cent). The occurrence of morbidity was 3.7 per cent in the consanguineous group in comparison to 1.9 per cent in the controls; the difference was not statistically significant, but in its direction and size it was similar to the results obtained in other studies. No autosomal recessive disorders were recognized in either group. The authors cautioned that the increased infant mortality associated with inbreeding may partly be accounted for by environmental differences between the consanguineous and nonconsanguineous parent groups.

## Offspring of Uncle-niece Matings

Although uncle-niece marriage is legal in some populations, a report of the offspring of 27 uncle-niece marriages in the Moroccan Jewish community in Israel is the only objective description available of the genetic consequences of this type of mating.<sup>15</sup> Since the families were identified by means of the Jerusalem Perinatal Study, only those matings in which the wife was pregnant at the time of the study (1966-68) were considered; thus there was a bias with respect to the exclusion of sterile or relatively infertile couples and those whose pregnancies may have aborted early. The 27 uncle-niece couples had had 155 previous pregnancies. A control group of 27 couples, matched for country-of-birth (Morocco), age and socioeconomic status, had had 154 previous pregnancies. The mortality rate was much higher (16.8 per cent) in the children of the uncle-niece matings than in the controls (6.7 per cent). The malformation rate



was 8.9 per cent in the inbred children and 3.7 per cent in the controls. Birth weight was lower in the inbred group, but the difference was small and not statistically significant. The occurrence of stillbirths was not affected.

Although there are no other reports of the genetic consequences of uncle-niece matings, Bashi's study on the cognitive performance in children of closely related Arab parents in Israel provides findings on the intelligence of children of double first cousins, for whom  $F=1/8$ , the same as for uncle-niece pairs.<sup>16</sup> Bashi studied 125 offspring of double first cousins, 970 offspring of first cousins, and 2,108 children of unrelated parents. All of the children were between 10 and 12 years of age and attending school, but on all the tests of cognitive ability used, the offspring of double first cousins ranked lowest in average standing, the offspring of first cousins were intermediate, and the offspring of unrelated parents were highest.

## Offspring of Parent-child and Brother-sister Matings

Because of the stigma associated with incest, it is not surprising that there is little precise information on the genetic consequences to the children of first-degree relatives. There have been only five studies dealing with these unions, four of which describe the experience of small numbers of persons. The findings of these studies are summarized in Table 34.2.

The first report was that by Carter from England who identified 13 children of incest prior to birth or as newborns and followed them for a period of between four and six years.<sup>17</sup> Only five were normal. Three had died, one of a definitely autosomal recessive disease, one of a disease which was probably autosomal recessive, and one of a cardiac defect which is now considered to have multifactorial inheritance. One child was severely retarded and the four others were educationally subnormal.

In Michigan, Adams and Neel studied 18 children of incest and 18 controls whose mothers were matched as closely as possible for race, age, stature, weight, intelligence and socioeconomic status.<sup>18</sup> All of the mothers were unwed and were pregnant for the first time. The cases were ascertained during pregnancy, and the children were examined at birth, at the age of six months, and later, if there were abnormal findings. The children of incest averaged one-half pound (240 g) less at birth than the weight of the control children. Of the 18 children, only seven were normal. By the time of the six month evaluation, five had died, one had a major malformation (bilateral cleft lip), two were severely retarded and three were less severely retarded, with intelligence quotients (IQs) of about 70. By comparison, all of the children in the control group had survived, of whom one had a major malformation (a branchial cleft cyst), 15 had average intelligence (IQ of 91 or more), and three were mildly retarded (IQ of 80-90). The frequency of "death-plus-major defect" was 33 per cent in the children of incest and 5.4 per cent in the comparison group. In addition, the frequency and severity of mental retardation was higher in the children of incest.

**Table 34.2**  
**Risks to Children of Incest**

Author	Number of Children	Number Living at Time of Follow-up	Number Normal	Probably Autosomal Recessive	Abnormalities Reported <sup>1</sup>		Non-specific Retardation	
					Probably Multifactorial	Unclassified	Severe	Mild
Carter, 1967	13	10	5	2	1	—	1	4
Adams & Neel, 1967	18	13	7	—	1	—	2	3
Seemanova, 1971	161	138	78	—	—	51	20 <sup>2</sup>	Not Stated
Knight (cited by Bunday, 1980)	23	Not Stated	7	3	3	—	5	11
Baird and McGilivray, 1982	29	29	9	3	—	9	—	—

<sup>1</sup> Some children had more than one abnormality.

<sup>2</sup> Twenty other children were both retarded and physically abnormal.

The largest series of the offspring of incest studied, a group of 161 children, was reported from Prague by Seemanova.<sup>19</sup> In this retrospective study, the children were identified after birth by means of their medical records. The comparison group consisted of 95 children born to the same mothers with unrelated partners. Although this choice of controls has obvious advantages, the two groups differed with respect to maternal age (four to five years older in the control group) and with respect to parity (the pregnancies producing the children of incest were usually the mothers' first pregnancies). Twenty-three of the 161 children of incest (14.3 per cent) and five of the 95 controls (5.3 per cent) had died by the time of follow-up. Among the survivors, 78 of the 138 children of incest (56.5 per cent) were classified as normal; the remainder had: congenital malformations; other types of abnormalities probably inherited as autosomal recessive, such as congenital deafness and mucopolysaccharidosis; mental retardation; or a combination of these disorders. In the comparison group, 85 of the 90 children were normal.

A short series of 23 children of incest, ascertained at or shortly after birth, was analyzed by Knight.<sup>20</sup> Only seven children were normal at follow-up, three had autosomal recessive disorders, three had malformations presumed to be multifactorial, five were severely retarded, 11 were mildly retarded and five had other defects. (Some children had more than one abnormality.)

A study conducted in British Columbia has provided findings on 29 children, 21 of whom were ascertained because of incest and eight because of medical problems that warranted referral to a paediatric genetics unit.<sup>21</sup> A high risk of early death, abnormality and retardation was found. In the group of 21 children, nine were normal and 12 had abnormalities, nine of which were severe. Eight had low birth weights (less than 2500 gm) that could only be accounted for in part by the young age of their mothers (average age being 16 years). Six of the children were developmentally delayed or retarded. In the second group, all of the children were abnormal. One of the first group and three of the second had autosomal recessive conditions. Two children had died a few months after birth of sudden infant death syndrome.

None of the research studies of the children of first-degree relatives is ideal with respect to the size of the groups investigated or with respect to the design of the research methods used. Each study suffers from certain unavoidable methodological weaknesses. Four dealt with relatively small groups, three lacked controls and in none was information given about the risk of sterility or early fetal loss. The ascertainment of cases, the classification of the defects observed and the duration of the period of follow-up were not uniform. It is often impossible to be sure from the findings presented whether a particular identified abnormality was autosomal recessive, multifactorial, otherwise genetically determined or nongenetic. **Although it is difficult to compare the findings of the studies, nevertheless, they are in general agreement on one point, namely, that children of incest are at high empirical risk of abnormality, severe mental retardation and early death.**



## Comparative Risk of Genetic Disease

The risk of serious abnormality in the offspring of a first-degree mating (parent-child or brother-sister) is about one-half and the risk for a child of a second-degree mating (grandparent and grandchild) is close to one-tenth. Both of these rates are well above the risk in the general population of between 2 and 3 per cent. Early childhood mortality is exceptionally high in both groups.

These risks are clearly not negligibly low. They should certainly be taken into account by physicians, adopting parents and others responsible for children who are or might be of incestuous origin.<sup>22-23</sup> One basis that can be used in considering the level of these risks is the standard used in genetic counselling. There is a tendency among genetic counsellors and parents who consult them to characterize a risk of genetic disease below 10 per cent as "low" and a risk above 10 per cent as "high". However, there is another principle to which genetic counsellors, almost without exception, subscribe; namely, that the parents themselves must be the final arbiters of their own risk. In practice, it is found that there is a very wide variation in the parents' perception of risk. Some parents will continue to have children, even when those children face a 50 per cent risk of having a serious genetic disease. In contrast, other parents will shy away from a risk as low as 1 per cent and will refrain from having more children.

The risk of genetic disease in the offspring of a first-degree incestuous mating falls in the same range as that for single-gene diseases. For example, if one parent has a dominantly inherited disease (i.e., a disease which occurs when only one of a pair of genes is defective) and the other parent is healthy, the risk of a child of the marriage having the same disease as the affected parent is one half. If two normal parents have a child with a recessively inherited disease (i.e., a disease which occurs when both genes of a pair are defective), then the risk of their next child having the same disease is one quarter. In both of these examples, the risk would be predictable in advance. The parents would, if they sought counsel, be informed of these risks, but they would be encouraged and helped by their physician or genetic counsellor to reach their own decision about whether they should have more children. As noted, it is known as a matter of experience that some parents, though perhaps a minority, will, when faced with risks of this magnitude, still elect to have more children. In this respect, there is no law which prohibits them from doing so.

In summary, with respect to the comparative risk of children having a genetically inherited disease, the offspring of incestuous matings are subject to exactly the same genetic defects as other children; that is to say, any genetic disorder seen in the child of an incestuous union may also be found in the offspring of unrelated parents. The risk of genetic disorders in children of incest lies in the same range as the risks to children of unrelated parents who are genetically predisposed to have defective children. However, **the probability that a genetic disorder will be present is much higher for children of incest than for children of unrelated parents in the general population (as high as about 50 per cent rather than about 2 to 3 per cent).**

# Summary

On the basis of comparative studies of inbred and outbred human populations and of studies of experimental organisms, the following conclusions are reached:

1. Inbred children are at increased risk of early mortality, congenital abnormalities and cognitive disability.
2. The disorders seen in inbred children are not different in nature from those for which any child is at risk.
3. The probability, however, that a genetic disorder will be present in the children of incest is much higher than it is for children of unrelated parents in the general population.
4. The more closely related the parents, the higher the risk of defective offspring.
5. The risk is higher when the parents are from a normally outbred population than when they are from a relatively inbred group.
6. With minor exceptions, the increase in risk applies only to the first-generation offspring of related parents, not to subsequent generations.
7. The magnitude of the risk, even for children of parent-child or brother-sister unions, is in the same range as the risk to children of unrelated parents having certain genetic constitutions.

The incest prohibition in the *Criminal Code* includes blood relationships where there is a risk of genetic disorder in the children well above the risk in the general population. Of course, children of some unrelated parents may have a similar chance of having a serious genetic disease. Today, it is possible, in an increasing number of cases, to determine whether the parent is affected. But it is necessary to make the determination. The incest provision in the *Criminal Code* serves the useful purpose of providing a specific indicator of higher risk for the limited number of blood relationships it describes.

As other findings in the Report clearly show, most incest relationships involve adults and children and typically entail harassment, seduction, threats or the use of physical force against the child. In the Committee's view, while the social and legal considerations given elsewhere in the Report alone warrant the retention of the offence of incest in the *Criminal Code*, the findings of the review of the genetic risks to children of incest support further the case for retaining the incest prohibition.

## References

### Chapter 34: Genetic Risks of Incest

- <sup>1</sup> Harper, P.S., *Practical Genetic Counselling*. Baltimore, University Park Press, 1981.
- <sup>2</sup> Morton, N.E., J.F. Crow, H.J. Muller, An estimate of the mutational damage in man from data on consanguineous marriages. *Proceedings of the National Academy of Sciences U.S.A.*, 42: 855-863, 1956.
- <sup>3</sup> Schull, W.J., Empirical risks in consanguineous marriages: sex ratio, malformation, and viability. *American Journal of Human Genetics*, 10: 194-343, 1958.
- <sup>4</sup> Morton, N.E., Empirical risks in consanguineous marriages: birth weight, gestational time, and measurements of infants. *American Journal of Human Genetics*, 10: 344-349, 1958.
- <sup>5</sup> Schull, W.J., J.V. Neel, *The Effects of Inbreeding on Japanese Children*, New York, Harper and Row, 1965.
- <sup>6</sup> Book, J.A., Genetical investigations in a north Swedish population: the offspring of first cousin marriages. *American Journal of Human Genetics*, 32: 191-221, 1957.
- <sup>7</sup> Slatis, H.M., R.H. Reis, R.E. Hoene, Consanguineous marriages in the Chicago region. *American Journal of Human Genetics*, 10: 446-464, 1958.
- <sup>8</sup> Sutter, J., Recherches sur les effets de la consanguinite chez l'homme. *Biologie Medicale* 47: 563-660, 1958.
- <sup>9</sup> Freire-Maia, N., A. Freire-Maia, The structure of consanguineous marriages and its genetic implications. *American Journal of Human Genetics*, 25: 29-39, 1961.
- <sup>10</sup> Shine, I., *Serendipity in St. Helena*. Oxford: Pergamon Press, 1970.
- <sup>11</sup> Bashi, J., Effects of inbreeding on cognitive performance. *Nature*, 166: 440-442, 1977.
- <sup>12</sup> Fraser, F.C., C.J. Biddle, Estimating the risks for offspring of first-cousin matings: an approach. *American Journal of Human Genetics*, 28: 522-526, 1976.
- <sup>13</sup> Harper, P.S., *op. cit.*
- <sup>14</sup> Fraser, F.C. and C.J. Biddle, *op. cit.*
- <sup>15</sup> Fried, K., A.M. Davies, Some effects on the offspring of uncle-niece marriage in the Moroccan Jewish community in Jerusalem. *American Journal of Human Genetics*, 26: 65-72, 1974.
- <sup>16</sup> Bashi, J., *op. cit.*
- <sup>17</sup> Carter, C.O., Risk to offspring of incest. *Lancet*, 1:436, 1976.
- <sup>18</sup> Adams, M.S., J.V. Neel, Children of incest. *Pediatrics*, 40: 55-67, 1976.
- <sup>19</sup> Seemanova, E., A study of children of incestuous matings. *Human Heredity*, 21: 108-128, 1971.
- <sup>20</sup> Knight, I.G., cited by S. Bunday, The child of an incestuous union. In: Wolkind S(ed): *Medical Aspects of Abortion and Foster Care*, London, Heinemann (Clinics in Developmental Medicine 74: 36-41).
- <sup>21</sup> Baird, P.A., B. McGillivray, Children of Incest, *Journal of Pediatrics*, 101: 854-857, 1982.
- <sup>22</sup> Hall, J.G., Children of Incest: when to expect and how to evaluate? *American Journal of Diseases of Children*, 132: 1045, 1978.
- <sup>23</sup> Thompson, J.S., M.W. Thompson, *Genetics in Medicine*, 3rd ed. Philadelphia, Saunders, 1980.



## Chapter 35

# Criminal Injuries Compensation Boards

In each province and territory (except Prince Edward Island), there is an administrative board whose function is to award compensation to innocent victims of violent crime. This chapter reviews the practice of these boards in awarding compensation to young victims of sexual assault.

## Compensation

The role of criminal injuries compensation boards has been outlined in a 1983 report compiled jointly by Statistics Canada and the Federal Department of Justice:<sup>1</sup>

From a social security point of view, criminal injuries compensation forms part of a large network of programs to ensure that Canadian residents enjoy both income security and necessary social services, regardless of their socio-economics status . . . From a justice perspective, criminal injuries compensation represents a significant development to improve the criminal justice system, by compensating innocent victims of violent crime. It is seen as part of a wider effort which includes amendments to Canada's *Criminal Code*, the development of modified procedural rules, the placing of increased emphasis on services for crime victims and the encouragement of community based alternatives to the regular criminal court process and prisons.

Funds for the payment of compensation awards and for the administration of the programs come from the Consolidated Revenue Fund of each province and territory.<sup>2</sup> These outlays are reimbursed in part by the federal government, through the operation of a federal-provincial cost-sharing program established in 1973 and revised in 1977.<sup>3</sup> Although the compensation programs in each province and territory differ in important respects, the broad outline of these programs can be stated briefly. Compensation is awarded for injury or death resulting from:

1. A specified crime (including most sexual offences) committed by another person.
2. An effort to prevent crime (either with or without the assistance of a peace officer).
3. An effort to arrest an offender or suspected offender.<sup>4</sup>

The injured party or his or her representative must apply within stated time periods which normally may be extended at the discretion of the Board. The Board must be satisfied that the injury or death for which compensation is claimed resulted from one of the three reasons specified above. It is empowered to hear all relevant evidence regardless of whether such evidence would be admissible in a court of law. In eight Canadian jurisdictions, the Board may hold the hearing *in camera* in appropriate circumstances, for example, where the applicant is a victim of sexual assault. In four jurisdictions, the Board may issue an order prohibiting the publication of evidence raised at the hearing.

The arrest or conviction of the offender is not a prerequisite to the granting of compensation. Where the offender has been apprehended, convicted and has exhausted his or her legal appeals, this is considered conclusive proof that a criminal offence has been committed.

Compensation may be awarded in the form of lump sum payments, periodic payments, or both. Victims may proceed, simultaneously, to seek criminal injuries compensation and a civil remedy in the courts. Where a victim is successful in obtaining both a compensation award and a civil judgment for damages, he or she is required to repay the compensation received, in whole or in part. If the victim obtains a compensation award and does not launch a separate civil action for damages, the victim's future right of action is normally subrogated to the Board or to the relevant provincial Minister.

From the perspective of sexual assault victims, a key issue is the nature and amounts of damages which may be awarded under criminal injuries compensation schemes. All jurisdictions impose a statutory maximum on the amount of compensation which may be awarded. Beyond these statutory upper limits, no additional compensation may be granted, regardless of the severity of the applicant's injury or disability. Moreover, these upper limits are far lower than the largest amounts for damages awarded in civil actions.

A further problem is the kinds of damages for which compensation may be awarded. The principal damages suffered by sexual assault victims will often be non-pecuniary; the victim may have suffered no permanent physical injury, but may nonetheless have incurred lasting emotional and psychological injuries (non-pecuniary damages) which, in some jurisdictions, are considered non-compensable. For example, there is no provision for compensating "pain and suffering" in the criminal injuries compensation schemes in Quebec, Manitoba, Alberta and the Northwest Territories. Further, in two of the provinces in which compensation for "pain and suffering" may be awarded — New Brunswick and Saskatchewan — it appears that only pain and suffering experienced by the victim can be claimed, and not that experienced by the victim's dependants or by the persons responsible for a disabled victim's maintenance.

There are, however, statutory provisions which directly address at least a narrow class of sexual assault victims. The inclusion of pregnancy and nervous shock within the definition of "injury" in all jurisdictions, except Nova Scotia, suggests that some compensation will be awarded to sexual assault victims in

this category. Further, payments for the maintenance of a child born as a result of a sexual assault are expressly authorized in eight jurisdictions.

Year	Total Number of Cases Compensated	Proportion of Compensation for Sexual Assault Cases
		Per Cent
1975-76	1963	3.7
1976-77	2586	3.7
1977-78	2604	3.6
1978-79	3232	4.5
1979-80	3812	4.5

Although compensation for sexual assault cases constitutes a small proportion of all awards for which compensation has been provided, the proportion of these cases rose from 3.7 per cent in 1975-76 to 4.5 per cent in 1979-80 for eight provinces and territories (except Prince Edward Island and Nova Scotia).<sup>5</sup> This trend indicates that there is a growing recognition of these Boards as a public resource that can be turned to as a means of assistance for victims of sexual assaults.

### Case Studies

The case studies obtained from the official records of the criminal injuries compensation boards in Ontario, Saskatchewan and British Columbia illustrate the range of considerations which these boards take into account in assessing the level of compensation that should be awarded to young victims of sexual assault. The year in which the award was made is indicated in each case; information tending to identify the victims has been deleted.

### Compensation Awards in Ontario

Although the Ontario Criminal Injuries Compensation Board has made several compensation awards to young sexual victims since 1979, the case studies presented below are taken from 1978-79 and preceding years; the incidents involving young sexual victims who applied for compensation in more recent years are not reported fully enough to serve as a basis for case studies.

The amounts awarded for pain and suffering to each applicant constitute a part of the total compensation award in each case.

#### *Case Study 1 (1978-79)*

The victim, a six year-old boy, was enticed into a garage where he was beaten with an empty bottle. There was also an attempted sexual assault. He sustained lacerations to his head, arm and leg, and still has nightmares. The offender was charged and convicted of assault causing bodily harm. He received a suspended sentence with three years' probation.

*Compensation Awarded:* Total — \$1,080.00 (pain and suffering, \$1,000.00).



#### *Case Study 2 (1976-77)*

The applicant, then age 16, was attacked and raped in a field after accepting a ride from an unknown male. After stabbing the victim twice, the offender piled bricks and rocks on top of her. The offender was convicted of attempted murder and sentenced to life imprisonment.

*Compensation Awarded:* Total — \$3,000.00 (pain and suffering, \$3,000.00).

#### *Case Study 3 (1976-77)*

The applicant's daughter, age 15 at the time of the hearing, was returning to her sister's home in Toronto when a man who had been following her tried to force himself upon her. When she resisted, he slashed her across the throat with a knife and also across the palm of her right hand. The offender was convicted of wounding and sentenced to three and a half years in federal penitentiary.

*Compensation Awarded:* Total — \$2,765.00 (pain and suffering, \$2,000.00).

#### *Case Study 4 (1976-77)*

The applicant's son, then age four, was indecently assaulted by a 16 year-old male. The victim suffered bodily harm and nervous mental shock. The latter condition, at the time of the compensation hearing, was still evident to his doctors. The victim was undergoing regular weekly treatments as a result. The offender was convicted of indecent assault and given a suspended sentence with two years' probation.

*Compensation Awarded:* Total — \$3,910.00 (pain and suffering, \$3,500.00).

#### *Case Study 5 (1976-77)*

The applicant's daughter, then age 13, was the victim of a brutal assault and rape. She sustained extensive bruising and swelling on the left side of her face, two front teeth were broken and there was a large bruise around her neck where she had been tied with a rope. The victim became withdrawn and introverted. The offender was sentenced to eight years' imprisonment for rape and two years' concurrent for robbery.

*Compensation Awarded:* Total — \$5,250.00 (pain and suffering, \$5,000.00).

#### *Case Study 6 (1976-77)*

The applicant's daughter, then age eight, was abducted and raped by the offender. She was found nude in a ditch with one of her socks tied around her throat. She sustained massive injuries to the vaginal wall extending to the cervix and through to the rectum. The offender was sentenced to two concurrent terms of life imprisonment for attempted murder and rape, and to a concurrent sentence of four years for the kidnapping.

*Compensation Awarded:* Total — \$11,896.20 (pain and suffering, \$11,000.00).

#### *Case Study 7 (1976-77)*

The applicant's daughter, then age 16, was returning home from a party when she was approached by the offender and threatened with a knife. The offender took her to a deserted spot and, after gagging her with a scarf and tying her hands with leather thongs, raped her two or three times. He then started to torment her by throwing lighted matches at various parts of her body, after dousing her with alcohol. He then slashed her left breast with the

knife. The offender was convicted of rape and sentenced to 15 years' imprisonment.

*Compensation Awarded:* Total — \$6,385.00 (pain and suffering, \$6,000.00).

*Case Study 8 (1975-76)*

The applicant, a 16 year-old girl, was walking to her place of residence one night when she was punched and raped by an unknown male. She subsequently became pregnant and was recommended for a therapeutic abortion, which she had.

*Compensation Awarded:* Total — \$3,080.90 (pain and suffering, \$2,000.00).

*Case Study 9 (1975-76)*

The victim, a 12 year-old girl, was invited by neighbours to their cottage for two weeks. One night during this visit, the husband-neighbour raped the victim. The offender was subsequently convicted of the offence of unlawful sexual intercourse with a female under 14 years of age and was sentenced to imprisonment for two years less a day.

*Compensation Awarded:* Total — \$1,817.30 (pain and suffering, \$1,500.00).

*Case Study 10 (1975-76)*

The victim, a 14 year-old girl, was playing with two friends when she was grabbed by the offender and beaten until she was unconscious. He then dragged the victim to a shack where he raped her and forced her to commit fellatio. The victim sustained bruises about the face and external genitalia. The offender was convicted of rape and sentenced to 12 months' imprisonment to be followed by an 18 month probationary period.

*Compensation Awarded:* Total — \$2,603.20 (pain and suffering, \$2,000.00).

*Case Study 11 (1975-76)*

The applicant, a 17 year-old student, had just completed some shopping when she was approached by two young men who offered her a ride home. She accepted the offer and was beaten and raped en route to her home. She sustained a fractured nose, a chipped front tooth and two black eyes. The principal offender was convicted of rape and sentenced to imprisonment for two years less a day to be followed by a one year probationary period.

*Compensation Awarded:* Total — \$1,135.28 (pain and suffering \$800.00).

*Case Study 12 (1975-76)*

The victim, a 12 year-old boy, was walking to a hockey arena near his home when he was approached by the male offender, who told the boy to get into his car. The victim was then driven to a hockey arena and later to a motel where he was forced to engage in gross sexual indecencies. The boy was then beaten and left in a state of unconsciousness. The offender was convicted of assault causing bodily harm and, according to the Board's report, "was sentenced to 3 years consecutive to two life sentences then being served."

*Compensation Awarded:* Total — \$2,997.40 (pain and suffering, \$2,000.00).

*Case Study 13 (1975-76)*

The 10 year-old victim and her girlfriend (age not given) were lured into the offender's house and subjected to physical and indecent assault. The

offender was convicted on charges of indecent assault and gross indecency. He received a total sentence of five years' imprisonment.

The victim suffered damage to her genital area and emotional trauma. The victim's girlfriend sustained burns to her naval area, welts over the buttocks and damage to the genital area. At the time of the hearing, the child had recovered from her physical injuries, but continued to experience nervous tension.

*Compensation Awarded:* Total — \$1,420.00 (pain and suffering, \$1,250.00).

*Case Study 14 (1974-75)*

The victim, age seven, was indecently assaulted and, although no physical injury was sustained, she underwent a psychiatric examination. The offender pleaded guilty to indecent assault and was given a two year suspended sentence with probation.

*Compensation Awarded:* Total — \$710.00 (pain and suffering, \$700.00).

*Case Study 15 (1973-74)*

The victim, age 15, was brutally assaulted and raped by a casual acquaintance. The offender was convicted of rape and indecent assault; he was sentenced to seven years' imprisonment.

*Compensation Awarded:* Total — \$2,376.00 (pain and suffering, \$2,000.00).

*Case Study 16 (1973-74)*

The victim, age 16, was raped and beaten to death by male persons unknown. The applicant, the father of the deceased victim, received compensation for expenses incurred as a result of his daughter's death.

*Compensation Awarded:* Total — \$497.37.

*Case Study 17 (1973-74)*

A young girl, 14 years of age, was the victim of a vicious knife attack, wounding and rape. She lost the sight of her right eye as a result of the attack. The offender was sentenced to a total of 12 years' imprisonment on charges of rape and wounding.

*Compensation Awarded:* Total — \$10,331.00 (pain and suffering, \$9,500.00).

## Compensation Awards in Saskatchewan

*Case Study 18 (1983)*

The victim was 16 years-old at the time of the incident. Late one summer night, she was raped while staying in an apartment in a Saskatchewan city. She was taken to a hospital, where it was determined that she suffered lower quadrant abdominal pain, severe anxiety and trauma. She was later treated by a chiropractor for multiple subluxations with concomitant muscle contusions to the right cervical muscle and upper right trapezius muscle. The victim recovered from the physical injuries in about one month. Her assailant was convicted of rape and sentenced to three years' imprisonment.

The victim applied for compensation on the grounds of pain and suffering and incidental expenses incurred. The Board made the following award to the applicant, to be placed in trust with the Official Guardian's Office until she reached the age of majority:



### *Compensation Awarded:*

For pain and suffering	\$3,500.00
For damaged clothing	72.50
To the applicant's lawyer	100.00
TOTAL AWARD	\$3,672.50

### *Case Study 19 (1983)*

The female applicant was 18 years-old at the time of the incident: she was staying with relatives in a Saskatchewan city. In late summer, 1982, at about 1:00 a.m., she was listening to a record at her cousin's house when she was sexually assaulted by him. The applicant was seen by a physician some time later and was diagnosed as suffering from a linear tear to her hymen, in addition to suffering from reactive depression and anxiety. In December, 1982, the applicant underwent surgery to repair the injury to her hymen. According to a psychologist's report, she had made good progress in recovering from the trauma induced by the sexual assault.

The incident was reported to the police by a third party report made by a Rape Crisis Centre in the western province in which the applicant normally resided. To date, no charges have been laid against the assailant.

### *Compensation Awarded:*

For pain and suffering	\$4,000.00
For estimated income loss	850.00
For damaged clothes	70.00
For travelling expenses	789.80
Contribution towards telephone calls	100.00
For miscellaneous expenses	30.00
For medical care	155.00
For medical bills	290.00
For legal advice	10.00
TOTAL AWARD	\$6,294.80

### *Case Study 20 (1979)*

The female applicant, A.B., was 14 years-old at the time of the incident. In October, 1977, A.B. was employed as a baby-sitter for X, and in the course of her employment stayed at his residence until about 2:00 a.m. one morning when X, X's wife and Y returned to X's residence. X and Y agreed to take the applicant home, but instead drove her to another residence and then to a field several miles outside the city. There she was forcibly undressed and sexually assaulted a number of times before getting out of the car on the pretext of going to the washroom. She then ran away. X and Y attempted unsuccessfully to find her. She eventually found her way back to the highway, was picked up by a passing motorist and taken to a police station.

The victim's father, C.B., made the application on his daughter's behalf. Evidence presented to the Board established that these events had had a severely traumatic effect on A.B.; the attending physician stated that A.B. was more distraught than any of the rape victims he had ever examined. The parents of A.B. testified that she had suffered a great deal of stress as a result of the incident, and had lost her self-confidence and most of her friends. She was depressed for a prolonged period and was extremely nervous about leaving the family home by herself. During the period prior to the criminal trial, she could not work as a baby-sitter and suffered a consequent loss of wages. She began to improve after court proceedings were completed, has since

obtained employment and made some progress towards normalizing her social life. The male assailants X and Y were convicted of rape.

*Compensation Awarded:*

To A.B., to be paid to the Official Guardian on her behalf for pain and suffering	\$5,000.00
To A.B., for lost wages	\$ 800.00
To C.B., for pecuniary loss regarding clothes, glasses and incidental medical expenses	<u>\$ 200.00</u>
TOTAL AWARD	\$6,000.00

*Case Study 21 (1979)*

In February, 1978, the applicant, a 16 year-old girl, was walking home when a stranger asked her to help him start his car. She refused, but the stranger persisted. As she approached the car, the man pulled out a knife and forced her into his car, where he indecently assaulted and raped her.

A warrant was issued for the arrest of the offender on a charge of rape, but the offender committed suicide before the warrant was effected.

As a consequence of being raped, the applicant became pregnant and underwent a suction curettage during the first trimester of her pregnancy. Medical complications ensued and necessitated a second operation 10 days later. At the compensation hearing, the applicant's parents stated that, although her physical recovery from the ordeal was satisfactory, she continued to suffer from emotional tension and from a generally unstable emotional state.

*Compensation Awarded:*

To E.F. (the applicant), to be paid to the Official Guardian on her behalf and to be placed in trust until she reached the age of majority	
For pain and suffering	\$4,800.00
For medication	20.00
For damaged clothing	<u>138.00</u>
TOTAL AWARD	\$4,958.00

*Case Study 22 (1977)*

This was an application on behalf of A.D., a girl who was 13 years-old at the time of the incident. While she was baby-sitting at the home of a friend, her friend's 23 year-old brother engaged her in conversation. He then grabbed her, threatened her with a knife and compelled her to submit to sexual intercourse. The forced sexual act was repeated several times before the assailant eventually left the premises. A.D. complained to a girlfriend later that evening and told her mother of the incident the following morning. The police were notified and A.D. was taken to a hospital where she was medically examined.

The assailant, G.H., pleaded guilty to a charge of unlawful sexual intercourse with a female person who is under the age of 14 years.

The medical evidence indicated physical injuries consistent with violent sexual intercourse. A.D. was seen on nine subsequent occasions by the con-

sulting physician who reported that she was gradually recovering from a state of extreme nervousnesses and sleeplessness caused by the sexual assault.

In the text of its opinion, the Saskatchewan Board issued the following statement: "The Board views an assault of this nature as a most serious and traumatic incident in the life of an individual, notwithstanding that the physical injury involved was not great. We think such cases call for substantial compensation if the *Criminal Injuries Compensation Act* is to have any meaning."

*Compensation Award:* The Board awarded a sum of \$3,500.00 for pain and suffering, to be paid to the Official Guardian on behalf of A.D.

#### *Case Study 23 (1977)*

The victim of this tragic incident was five years-old when she was forcibly sexually assaulted by her biological father. The application for compensation was made by the victim's mother.

The applicant was married to J. in 1959. A daughter K. (the victim of the sexual assault) was born to them in 1961. In the next four years, two other children were born into the family. The parties separated a year later, on the grounds of the cruelty of J. towards his wife and children and because of his sexual advances to the young child K. A few years later the parents were divorced. K.'s mother remarried and relocated herself and her three children with her new husband in a different city.

During the period of her separation from her first husband, the husband came to pick up the children to take them, in accordance with his visitation rights, to see his parents. The next time the mother saw her daughter K. was in the hospital, where she had been taken after being sexually assaulted by her father. The father was subsequently convicted of incest.

During her original stay in the hospital, the child K. was in great pain and severe emotional trauma. She remained in the hospital for six weeks, and later, when she was eight years-old, spent two months in a hospital in a different city. In the interim two and a half year period, she had no bowel control. She underwent a colostomy so that the bowel damage could be repaired; this procedure was then reversed before she was discharged.

Seven years after the sexual assault, K. was psychologically tested. She was still displaying symptoms of anxiety and abnormal fear of darkness and strangers. The Compensation Board stated in its report: "For the first year after the incident, she slept with her mother and was extremely tense and subject to nightmares. She has developed into a very quiet, worried type of person who has a limited social life but is coping reasonably well. She suffers from stomach ulcers. She still has frequent infections and may have to have further surgery on her bowels due to the presence of a fistula. At this time, it is not known whether she will ever be able to bear children, but there is a good chance that she may not. Her mother stated that K. plans to be a nurse. She did not wish to attend the hearing because of the emotional effect it would have on her. She still sees doctors regularly because of infection. In summary, we find that she was most grievously assaulted and should be compensated liberally."

*Compensation Award:* The Compensation Board awarded K. a sum of \$9,000.00 for pain and suffering, to be paid to the Official Guardian on her behalf. An award to K.'s mother of \$1,050.00 for pecuniary loss and medical expenses was later withdrawn by the Board, as such payment was, in the circumstances, barred by the Saskatchewan compensation statute.



## Compensation Awards in British Columbia

### *Case Study 24 (1981)*

An eight year-old girl was attacked, forcibly undressed and indecently assaulted by a male person in a deserted garage in Vancouver. The victim and two young friends of hers had been lured into the garage by the assailant on the pretext of looking for a lost dog. At the time of the application, the assailant had not yet been identified.

The eight year-old victim suffered multiple contusions and abrasions, and severe anxiety.

*Compensation Awarded:* Total—\$2,000.00

### *Case Study 25 (1981)*

A 13 year-old girl was attacked, threatened, indecently assaulted, raped and forced to perform an indecent sexual act by a male person in a deserted area near Coquitlam. The assailant was later apprehended and charged with rape.

The victim suffered multiple contusions and emotional trauma.

*Compensation Awarded:* Total—\$3,000.00

### *Case Study 26 (1979)*

A 12 year-old girl was attacked, indecently assaulted and raped by a male person at his residence in a small community. The victim had gone to this residence at the request of the male assailant's family, in order to babysit his two children. He later pleaded guilty to a charge of indecent assault on a female.

The victim, as a consequence of the attack, suffered from a severe state of mental anxiety.

*Compensation Awarded:* Total—\$2,500.00

### *Case Study 27 (1979)*

A seven year-old girl, over a period of about two years, was subjected to acts of indecent assault and gross indecency by a male person at several locations, including the assailant's residence in Victoria. He later pleaded guilty to several counts of indecent assault involving this incident as well as assaults on other children.

The seven year-old victim suffered from anal scar tissue, nervousness and mental anxiety.

*Compensation Awarded:* Total—\$6,000.00

### *Case Study 28 (1978)*

A 15 year-old girl was abducted by a man while walking down a street in Vancouver. She was forced into a vehicle, blindfolded, bound with rope, beaten and raped. At the time of the compensation hearing, the assailant, who was wanted by the police in connection with other, similar assaults, had not yet been apprehended.

The victim sustained multiple abrasions and contusions, rope burns, swelling about the wrists, multiple superficial lacerations and trauma.

*Compensation Awarded:* Total—\$3,000.00

## Summary

The Committee considers it a matter of fundamental justice that victims of sexual assault be adequately compensated for the full range of injuries and losses they sustain as a consequence of these crimes. We strongly endorse the view put forward by the *Law Reform Commission of Canada* in this context:<sup>6</sup>

At the basis of any society is a shared trust, an implicit understanding that certain values will be respected . . . A violation of those values in some cases may not only be an injury to individual rights, but an injury as well to the feeling of trust in society generally. Thus, the law ought not only to show a concern for the victim's injury but also take concrete measures to restore the harm done to public trust and confidence . . . Compensation . . . is directed towards the victim and should not be lost sight of as another meaningful and visible demonstration of societal concern that criminal wrongs be righted.

**In the Committee's judgment, much more needs to be done to publicize the existence and purpose of compensation boards in each jurisdiction.** As documented in the Committee's National Population Survey (see Chapter 6), these public resources are not seen as sources of assistance by most young victims of sexual assault or their families. Likewise, it is significant that in the Committee's national surveys of police forces, hospitals and child protection services, criminal injuries compensation boards were seldom identified or referred to as a potential source of assistance to be contacted. In this regard, one legal commentator has referred to the "almost total public ignorance of the schemes [for criminal injuries compensation],"<sup>7</sup> and this ignorance extends to eligible victims as well. According to the *Canadian Federal-Provincial Task Force on Justice for Victims of Crime*, which presented its Report in June, 1983, "a 1983 Department of Justice survey has found that few victims are even aware of the existence of such programmes."<sup>8</sup>

Clearly, there needs to be much greater public information made available about these compensation schemes if they are to better realize their professed goals, particularly in relation to victims of sexual assault.

Another evident deficiency in the operation of some of these programs is the non-compensability of certain forms of non-pecuniary damages, in particular, damages for pain and suffering. The several case studies cited leave no doubt about the nature of the genuine pain and suffering experienced by young victims of violent sexual assaults and the willingness of the Compensation Boards in Ontario, Saskatchewan and British Columbia, for example, to take these harms into account in awarding compensation.

**The Committee considers it essential that the pain and suffering experienced by victims of sexual assault be explicitly recognized in the enabling legislation in each jurisdiction and that this recognition be attended by a substantial increase in the federal-provincial funding of criminal injuries compensation programs in Canada.** As Burns has stated:<sup>9</sup>

Finally, we must ask ourselves why we are compensating victims of crimes. If our scheme is enacted to soothe the public or the victim, then how can we justify withholding compensation for pain and suffering? Take the case of a schoolgirl covered by provincial health care who is raped. As a schoolgirl she is probably not working and will not lose any wages, and as an insured person she will probably not incur any significant medical expenses. If we deny her compensation for pain and suffering we end up giving her nothing. This can hardly be said to manifest society's concern for its members, or to help restore those ties which bind society together and which were weakened by the assault.

In the Committee's judgment, without more adequate provincial and federal funding of criminal injuries compensation programs, neither increased public visibility nor wider categories of compensable damages will substantially improve the plight of sexual assault victims of all ages who are injured as a consequence of these crimes. Several of the remedial measures which the Committee recommends have also been advocated by the *Canadian Federal/Provincial Task Force on Justice for Victims of Crime*.

**In co-operation with the Department of Justice, the Department of National Health and Welfare, and Provincial and Territorial Governments, the Committee recommends that the Office of the Commissioner:**

- 1. In conjunction with Recommendation 2 relating to the undertaking of a national program of public education and health promotion, launch a vigorous campaign to inform citizens of the existence and purpose of Criminal Injuries Compensation Boards. This campaign should involve both the communications media and the police, hospitals, child welfare agencies, and other helping services.**
- 2. Review the funding of criminal injuries compensation programs and, where appropriate, recommend that the federal and provincial levels of support be increased in order to provide a more appropriate level of compensation for victims of sexual offences.**
- 3. This legislation be amended to provide explicitly for awards for physical and emotional pain and suffering to the victim, in order to ensure a more appropriate level of compensation for victims of sexual offences.**



## References

### Chapter 35: Criminal Injuries Compensation Boards

- <sup>1</sup> Statistics Canada/Department of Justice, *Criminal Injuries Compensation 1983* (Ottawa: Supply and Services Canada, 1983) at 3.
- <sup>2</sup> *Ibid.*, at 16.
- <sup>3</sup> *Ibid.*, at 16-18.
- <sup>4</sup> *Ibid.*, at 13.
- <sup>5</sup> *Ibid.*, at 93.
- <sup>6</sup> Law Reform Commission of Canada, *Restitution and Compensation: Working Paper No. 5* (Ottawa: Supply and Services Canada, 1974) at 17.
- <sup>7</sup> Burns, *Criminal Injuries Compensation* (Toronto: Butterworth, 1980) at 124.
- <sup>8</sup> *Report of the Canadian Federal-Provincial Task Force on Justice for Victims of Crime* (Ottawa: Supply and Services Canada, 1983) at 34. The Report does not discuss the methodology or specific findings of the 1983 Department of Justice survey.
- <sup>9</sup> *Supra*, note 7, at 218-19.



Part VII

Correctional Services





## Chapter 36

# The Research Record

The Committee's Terms of Reference stipulated that it should examine "the effectiveness of criminal sanctions and methods other than the application of criminal sanctions in dealing with the types of conduct involved in these offences". Following a review of the legal principles of sentencing as these pertain to sexual offences, the findings given in the remaining chapters of this section are taken from the National Corrections Survey conducted by the Committee of 703 convicted child sexual offenders who were in custody or under the supervision (probation or parole) of federal correctional services and those of eight provinces.

The National Corrections Survey was undertaken to complement the findings of the other national surveys in which information was obtained about suspected, known or charged offenders and to provide documentation concerning convicted child sexual offenders, their management and treatment, and their prior criminal record involving sexual offences. The findings of the Committee's several national surveys indicate that convicted child sexual offenders constitute only a small proportion of all persons who actually commit sexual offences against children and youths. Most of the research concerning this group has been based on the documentation of persons on probation, in custody or on parole. There is virtually no documentation about the selective process of winnowing that occurs between the actual occurrence of sexual offences and the conviction of a small proportion of offenders, about whether those who are convicted are more dangerous, or about the effectiveness of the different means used in their management. With respect to these complex and profound questions, the findings obtained in the National Corrections Survey are an earnest of the types of information required to provide a more complete documentation of these issues. The Committee returns to this matter in submitting its recommendations.

The findings in this section are presented in six chapters. In this chapter, a review is given of the methods and general findings of a number of previous advisory bodies and research studies that have dealt with these issues and the design of the National Corrections Survey undertaken by the Committee is described. Prior to undertaking this survey, the Committee, as part of its general review of the research literature on sexual offences against children and

youths, identified a number of research reports documenting Canadian experience with the management and treatment of convicted child sexual offenders. These studies constituted a necessary and useful starting point for the Committee's review. However, none of the studies contained a comprehensive and detailed assessment of who these offenders were and how they had been handled by correctional services. In order to obtain information about a broader cross-section of convicted child sexual offenders, the Committee undertook its national survey with the co-operation of federal and provincial correctional services.

A legal review of the general principles of sentencing as these pertain to sexual offences is given in Chapter 37, *Sentencing*. In this chapter, factors influencing the nature and length of sentences are considered, and in the chapters that follow, findings are presented concerning some of the circumstances which are taken into account on sentencing. These factors include, among others: the gravity of the offence; the ages of victims and offenders; the previous criminal record of the accused; the use of violence in committing the offence; the nature of the injuries sustained by victims; and gang sexual assaults.

In Chapter 38, *Convicted Offenders*, a description is given of the social background of convicted child sexual offenders. The Committee found in its review of the research literature that there was little consensus about who these offenders were, about their management, about the extent of their previous criminal record, or about the likelihood of their committing similar acts in the future. In order to provide a comparative baseline, where similar information is available from the other national surveys conducted by the Committee about suspected or charged offenders, these findings are drawn upon.

In Chapter 39, *Treatment*, available findings are given concerning the counselling and therapy that are provided for these convicted offenders. Across Canada, there is not a uniform policy with respect to whether medical, psychiatric and psychological assessments are kept separately for purposes of confidentiality from correctional management records or whether both types of information are stored together. For these reasons, the information on the treatment of convicted child sexual offenders obtained by the Committee is incomplete. In order to have assembled such information from all offenders included in the survey, it would have been necessary to have obtained the signed consent of each convict, a requirement which was not feasible in terms of the schedule and resources available to the Committee.

In Chapter 40, *Recidivism*, findings are given concerning the previous criminal records of convicted child sexual offenders and whether the offences occurred when they were minors or adults. On the basis of whether offenders were currently sentenced for homosexual or heterosexual offences against children, findings are given in relation to whether they had no previous criminal record, had committed only non-sexual offences in the past, or were known to have committed two or more sexual offences.



In Chapter 41, *Dangerous Sexual Offenders*, a review is given of all offenders having this designation whose victims were children or youths. A comparison is made between offenders having this classification and all other male convicted child sexual offenders for whom information was obtained in the survey.

## Federal Inquiries

During the past half century, four major national inquiries have been appointed to investigate different aspects of correctional services operating under federal jurisdiction. While none of these advisory bodies dealt directly with convicted offenders having children and youths as victims, their recommendations led to a number of legislative amendments to the *Criminal Code* which affected the classification and management of convicted child sexual offenders. These reports also called for a re-structuring of correctional services, a more complete assessment of offenders and the provision of treatment services.

1. 1938 *Royal Commission to Investigate the Penal System of Canada* (Archambault Report).
2. 1956 *Committee to Inquire into the Principles and Procedures followed in the Remission Service* (Fauteux Report).
3. 1958 *Royal Commission on the Criminal Law relating to Criminal Sexual Psychopaths* (McRuer Report).
4. 1969 *Canadian Committee on Corrections* (Ouimet Report).

The 1938 *Archambault Report* undertook an extensive review of federal correctional services.<sup>1</sup> The Commission drew its information from an assessment of historical crime statistics, and in the instance of recidivism, it undertook a review of 188 incarcerated offenders having 10 or more convictions. No information was given in this Report concerning victims or the nature of offences previously committed by offenders.

On the issue of 'habitual' offenders, including those committing sexual offences, the Commission characterized these prisoners as "the costly worthless dregs of society, for whom no adequate arrangements have been provided in Canadian prisons."<sup>2</sup> The Report recommended special legislation in relation to these offenders, that special prisons be established for their custody, that they receive thorough medical assessment and treatment, and that "accurate statistical information" be assembled to permit assessment of "recidivism, the success or failure of probation, ticket-of-leave or parole and other kindred matters".<sup>3</sup>

Appointed by the federal Department of Justice, the 1956 *Fauteux Report* recommended the repeal of existing statutes concerning determinate plus indeterminate sentences and that a new approach be adopted towards the parole of convicted offenders.<sup>4</sup> The Report concluded that the application of

provisions relating to habitual offenders was not “uniformly or frequently employed”<sup>5</sup> and that “appropriate arrangements should be made . . . for the uniform enforcement, in all provinces, of the provisions of the *Criminal Code* relating to habitual criminals and criminal sexual psychopaths”.<sup>6</sup>

On the question of sex offenders, the Committee recommended medical research concerning efficacious treatment and the establishment of separate prison — medical centres which would serve the special needs of these and other designated types of offenders. “The problem of the sex offender is [equally] difficult . . . When such a crime occurs many proposals, some of them hysterical, are advanced for the solution of the problem. Medical science is still uncertain as to the kind of treatment that may be effective, but it is obvious that effective treatment can only be discovered if such persons are made the subjects of special study. We feel that sex offenders should be removed from the normal prison population and that intensified research on the problem should be carried out”.<sup>7</sup>

The main empirical findings of the 1958 *McRuer Report* were based on statistical information assembled by the R.C.M.P. on 3110 convicted sexual offenders and an analysis of 23 incarcerated “sexual psychopaths”.<sup>8</sup> While no separate assessment was made of convicted child sexual offenders, the information provided indicated that 43.2 per cent of the victims of the 3110 sexual offenders were children age 13 years and younger (65.7 per cent, girls; 34.3 per cent, boys).

The main conclusions of the 1958 Royal Commission in relation to recidivism and offences involving the use of violence were that: “recidivism is not prevalent among the sexual offenders generally”; and “we find no evidence that the sexual offender tends to progress from a less violent to a more violent crime”.<sup>9</sup> These conclusions do not accord well with the documentation given in the Report. No comparative baseline was given which permits an assessment of the level of sexual recidivism with other types of offenders having prior criminal records. In addition, these observations were made in light of charges laid, a source of information which by itself is insufficient to determine the elements of offences, whether violence occurred, or if there is a progression from minor to serious crimes. If these limitations are disregarded, in the view of this Committee, the statistics given in the Report of the 1958 Royal Commission indicate that the level of sexual recidivism for certain types of offenders cannot be set aside as not being prevalent or that there is no progression in the types of crimes committed by recidivists. The statistics in the Royal Commission’s Report indicate that following a first conviction, 19.6 per cent of offenders who were initially convicted of indecent assault on a female and 69.6 per cent of those who were initially convicted of indecent assault on a male were subsequently convicted of rape, buggery or gross indecency, or attempts to commit these types of offences.

The recommendations of the 1969 *Ouimet Report* reiterated several of the main concerns identified by earlier federal inquiries dealing with convicted offenders.<sup>10</sup> The Report called for the more uniform application of provisions in



the criminal law, the repeal of statutes pertaining to dangerous sexual offenders which it recommended should be replaced by dangerous offender legislation, and the mounting of extensive empirical studies concerning recidivism, treatment and sentencing of these offenders.

The Committee's research on these issues focussed on 80 incarcerated habitual offenders and 57 dangerous sexual offenders. In the analysis of the former group, no break-down was given of the proportion of convicted 'habitual' *sexual* offenders (the number of offences was listed); the appraisal of the latter group was limited to a brief review of existing legal provisions and the geographic distribution of locations where these offenders had been sentenced. No information was given concerning the ages of sexual offenders, the nature of the crimes committed, and the ages and sexes of their victims. In addition, no comparison was made between these offenders and other convicted sexual offenders who on sentencing had not been designated habitual or dangerous offenders. The paucity of empirical evidence assembled by the 1969 *Quimet Committee* concerning these issues, however, did not serve to constrain it from concluding that "the present basis upon which a person may be found to be a dangerous sexual offender is inadequate" and that "the present legislation does not protect society against the offenders from whom society requires maximum protection".<sup>11</sup> These observations were made in the notable absence of reasonably sufficient documentation.

The findings of the four main federal inquiries that have dealt with convicted offenders do not provide a baseline with which a comparison can be made with the information obtained in the National Corrections Survey conducted by the Committee. These earlier national studies dealt with offenders having sentences of two years or longer who were in custody or under supervision of federal correctional services. None undertook a review of these offenders in relation to those having shorter sentences. Relying on official statistics, no information is given in the Reports of these federal inquiries concerning the elements of the offences committed, the circumstances of the offences and about the victims of offences.

Since the tabling of the 1938 *Archambault Report*, the several principal federal inquiries dealing with correctional services have reiterated a number of concerns about which no action has been taken that is congruent with the intentions of the recommendations submitted. The reports of these investigations have called, for instance, for more detailed and adequate official statistics, for comprehensive research on the efficacy of different means of assistance and treatment, and for a full assessment of recidivism in relation to the types of offences committed, sentencing decisions and the utility of different supervisory or custodial arrangements provided for convicted offenders.

The authorities receiving these reports have been impervious to these recommendations submitted by federally appointed inquiries. There is no published report for Canada that presents nationally assembled empirical findings



concerning the treatment and recidivism of convicted offenders, or of convicted sexual offenders. Even for the small group about which the most extensive documentation is available — habitual, dangerous and dangerous sexual offenders — no report has provided a reasonably sufficient or comprehensive assessment of these criminals.

In its recommendations given elsewhere in this Report, this Committee reiterates issues which have been cogently proposed by earlier federal investigations. There can be no doubt that more complete documentation concerning these issues is both feasible and warranted, and could serve as a requisite basis of assessing how better protection could be afforded victims of crime.

## Previous Research Studies

In its review of available Canadian research reports, the Committee found that, for virtually each issue which was considered, even in relation to providing a basic description of who convicted child sexual offenders were, the findings were sharply contradictory.<sup>12-58</sup> This apparent confusion is largely accounted for by the fact that different definitions have been used, that different types of offenders have been studied, and that different sources of information have been drawn upon. In addition, these studies have typically reported findings about small numbers of offenders, often those who were incarcerated in a single institution.

The definitions adopted about who these offenders are have varied widely. It has been a common practice in these studies to draw upon the information stored in correctional management systems, some of which do not contain centrally computerized records about victims. There has been no common denominator in this research in the selection of offenders in relation to the ages of their victims. The selection of sharply different age levels of victims has served to include or exclude certain types of offenders, particularly in relation to those having committed certain types of sexual offences. These age listings are generally truncated with the experience of older adolescents having been excluded, although by law, there may be no specified age limit (e.g., incest) or special protection may be afforded persons who are under age 21. Almost without exception, these research studies have ignored the various age levels specified in the sexual offences in the *Criminal Code*.

The information about convicted child sexual offenders has come from a variety of corrections — related sources, each of which has predictably yielded somewhat different information about these offenders. A majority of the studies have relied upon the federal correctional system with the result that only the experience of offenders having sentences of two years or longer has been documented. (Conversely, but less often, only the experience of offenders in a provincial correctional system may be considered). Still other sources of information, each of which sharply affects the type of information obtained, have included: persons on probation; pre-sentencing reports; persons referred for

psychiatric assessment who may be either in or out of custody; and persons on parole.

Generally, Canadian research studies have dealt with the experience of only small groups of convicted child sexual offenders (this is equally true of studies of all types of convicted sexual offenders.) It is an anomaly that the most extensive survey, that by C.A. Searle of 495 convicted sexual offenders in federal custody, is an unpublished report. This limitation may be partially accounted for by: researchers having been associated with a single institution in which only a small group of offenders was incarcerated; the time and resources required by external researchers in order to be able to mount larger studies; and the complexity of the organization of correctional services which involves different jurisdictions, incomplete documentation about victims, and the requirement that access be granted to information contained in different record-keeping systems. The small denominators of the groups studied in these studies serve to limit sharply the nature of the generalizations that can be derived.

There is general agreement in the research literature that, on average, most of these offenders are relatively young men. Beyond this fact, however, the findings are ambiguous concerning their family backgrounds, their educational and work experience, their prior contacts with children or their marital status. In some reports, it has been found that most offenders had not used alcohol or drugs; in contrast, other studies have concluded that a majority had been frequent users of these substances.

Because of its mandate, the Committee was particularly attentive to the findings of previous research concerning: the extent to which convicted sexual offenders were known to have physically injured victims; the types of counselling and therapy provided them and what was known about the efficacy of these services; and on the basis of their previous criminal records, to assess reported trends in relation to recidivism. The findings from available research studies on each of these issues are inconclusive.

In a number of widely cited studies undertaken in Canada, the United Kingdom and the United States, it has been concluded that child sexual offenders rarely, if ever, physically injure victims. On the basis of these findings, alternatives other than imprisonment have been recommended as the most effective means of handling these cases. The options proposed have varied, but such recommendations commonly advocate probation coupled with counselling, treatment and a re-alignment of the offender's living conditions. Contrasting with the conclusion that few of these offenders are dangerous are the findings of a number of recent studies which have found that between half and three in five convicted offenders had physically hurt victims and that a substantial proportion had previous criminal records.

In recent years, there has been a strong and growing tendency in some quarters to regard child sexual offenders as being unassertive, weak and inadequate persons who are more likely to be in need of counselling and assistance



than receiving the double punishment of being convicted and, if imprisoned, the harsh penalties meted out by other inmates. In this respect, it has been variously proposed that these offenders, preferably following their initial detection or before sentencing occurs, should be given a psychological and/or psychiatric assessment, and that in the recommendations given on sentencing, counselling and treatment should be incorporated as integral elements of their subsequent management.

Usually without the benefit of control groups serving as a basis for comparison, it has typically been concluded in the psychological and psychiatric research on sexual offenders that most of these offenders suffer from character and behaviour disorders with only a small proportion known to have some form of severe mental illness. Several studies have concluded that group therapy and behaviour modification (including aversion therapy) have been effective in controlling deviant sexual urges, in modifying sexual preferences, or in improving the well-being of offenders in other ways. On the basis of a review of a number of the main reports on this issue, V.L. Quinsey has noted:

“Few studies that compare different treatment techniques have appeared and comparative studies which involve follow-up data are almost nonexistent.<sup>59</sup>

The research on the recidivism of child sexual offenders yields a wide range of estimates. The most commonly cited rates are between five and 15 per cent, but an upper limit has been reported in some studies of up to one in two offenders. Because of the ethical and procedural difficulties involved, prospective studies have seldom been attempted. The Achilles' heel of retrospective studies is the accuracy of the information obtained about the true extent to which sexual offences may have been committed in the past. As is the case for most of the other research findings about convicted child sexual offenders, the wide variation in the reported rates of recidivism can be attributed to the different sources of information drawn upon and, at least for Canada, the fact that most studies have relied upon the experience of relatively few offenders. This important information has not been available for Canada with the result that there is no firm or clear-cut documentation of the long-term consequences of the different sentences imposed by courts.

In addition to the limited utility of studies dealing with rates of sexual recidivism, relatively little is also known about whether those persons who have committed more than one offence are likely to commit similar acts again, about whether there is a progression from minor to more serious offences, or about whether, with age, some offenders may 'burn out' and cease to commit further offences regardless of the types of sentences imposed. Each of these possibilities, none of which is sufficiently documented, has been suggested in the research literature.

In recent years, legislation has been enacted in relation to habitual offenders, dangerous sexual offenders and dangerous offenders; as noted, persons so designated have been the subject of several federal inquiries. None of these



investigations has dealt specifically with offenders having children as victims. The Committee is not informed of any Canadian national study that has compared dangerous sexual offenders having children as victims with other types of convicted child sexual offenders (dangerous or otherwise). In this regard, it appears to be generally assumed, although it is undocumented, that proportionately more of the former than the latter group have physically injured victims, have committed more serious offences, and are more likely to be psychopathic. The presumed assumption of the special provisions pertaining to dangerous offenders is that the general offences in the *Criminal Code* do not afford sufficient protection for Canadians from these vicious criminals. In relation to the Committee's mandate, however, it is unknown how many convicted child sexual offenders not having this special designation may have committed similar acts, used coercion, or may have physically injured victims. Although a majority of the victims of dangerous sexual offenders are children and youths, the utility of this legislation as a means of affording children better protection has not been documented.

**Canadians are deeply concerned about the need for adequate protection for children against sexual offences. Despite this fact, the Committee found in its review of the main research reports dealing with convicted sexual offenders that the available research is fragmentary, the principal findings are inconclusive and contradictory, and the utility of the recommendations proposed is limited due to the small size or the special nature of the groups studied. When the Committee undertook its review, there was no national assessment available concerning convicted child sexual offenders.**

**The Committee's review of the main research reports on these offenders indicates that there is a need for more extensive and indepth information to be assembled on a routine basis about their backgrounds and their management while in custody or under supervision, and that long-term prospective study is warranted in relation to assessing the consequences of different sentences imposed by courts as these may affect rates of recidivism.**

## Design of Survey

With the co-operation of the Correctional Service Canada and correctional services in eight provinces and the Yukon, information was obtained concerning 703 convicted child sexual offenders. Prior to the collection of information, a research protocol was developed and pretested using a number of federal and provincial correctional files. At this stage, valuable assistance was provided by a number of senior federal and provincial correctional officials who reviewed the initial and penultimate drafts of the research protocol and who facilitated the collection of information.

The research protocol was developed to assemble information in relation to: the *social characteristics* of convicted child sexual offenders, their victims, the offences committed, and the circumstances involved in the occurrence of

the offences; *recidivism* in relation to previous charges and convictions; and the *treatment* received by convicted offenders from physicians, psychologists, social workers and other professional personnel. In order to permit comparison of the findings to be assembled in the survey with those of the Committee's other national surveys, wherever it was appropriate and feasible in relation to available information, a similar means of classification was adopted. Because of the type of information being sought, the sources drawn upon included the institutional files of incarcerated offenders and the records of those on probation and parole.

In the National Corrections Survey, a convicted child sexual offender was defined in relation to: the types of sexual offences committed as these were then designated in the *Criminal Code*; and the age(s) of the victim(s). The date selected for the identification and selection of incarcerated or supervised convicted offenders was February 1, 1982. If an offender had been convicted of one of 22 sexual offences (including designation as a 'dangerous offender') and was under supervision on the cut-off date, then he or she was identified for possible inclusion in the survey. Offenders were identified on the basis of whether they had been convicted of one or more of the 22 offences listed in Table 36.1.

In the review of incarcerated and supervised offenders in the federal correctional system, five separate listings were undertaken to ensure that all such known offenders would be identified. The specific listings generated were:

1. All *incarcerated* offenders who had a *major offence* that was sexual in nature. A major offence was defined as:  
  
"The offence for which the inmate was given the longest sentence. If more than one offence awarded the same sentence, the major offence is the most serious one, as measured by the maximum penalty allowed by the law. If more than one offence carries the same maximum penalty, the major offence is the first of these listed on the first Warrant of Committal. The major offence may differ from the admitting major offence because of events happening after admission."
2. All *incarcerated* offenders who had a *secondary offence* that was sexual in nature.
3. All *supervised* offenders who had a *major offence* that was sexual in nature.
4. All *supervised* offenders who had a *secondary offence* that was sexual in nature.
5. All offenders who were *Dangerous Sexual Offenders*. The category Dangerous Offender includes those offenders classified as Dangerous Sexual Offenders, Habitual Offenders with a sexual offence, and Dangerous Offenders with a sexual offence.

The second criterion used in the selection of convicted child sexual offenders was the age of the victim(s) involved in the current conviction(s). To ensure that inclusion of all offenders who had committed sexual offences specified in

the *Criminal Code*, the age adopted for the inclusion of victims was 20 years-old or younger.

**Table 36.1**  
**Sexual Offences Used as the Basis for**  
**the Selection of Convicted Child Sexual Offenders**

Section of Criminal Code	Type of Offence
S. 143	• Rape
S. 145	• Attempt to commit rape
S. 146(1)	• Sexual intercourse with female under 14
S. 146(2)	• Sexual intercourse with female who is 14 years of age or more and is under the age of 16
S. 148	• Sexual intercourse with feeble-minded
S. 149(1)	• Indecent assault on female
S. 150(1)	• Incest
S. 151	• Seduction of a female who is age 16 but under age 18
S. 152	• Seduction under promise of marriage
S. 153(1)(a)	• Sexual intercourse with step-daughter, foster daughter, or female ward
S. 142(1)(b)	• Illicit sexual intercourse with a female person of previously chaste character and under the age of 21 years
S. 155	• Buggery or bestiality
S. 156	• Indecent assault on male
S. 157	• Acts of gross indecency
S. 166	• Parent or guardian procuring defilement
S. 167	• Householder permitting defilement
S. 168(1)	• Corrupting children
S. 169	• Indecent acts
S. 688	• Dangerous offender
(after October 15, 1977)	
S. 193 (1)	• Keeping a common bawdy house
S. 194	• Transporting person to a bawdy house
S. 195	• Procurement
<i>J.D.A.</i>	
s. 33	• Contributing to juvenile delinquency

When the survey was undertaken, the findings obtained in relation to 703 convicted child sexual offenders included a sizeable proportion of all such offenders. For several reasons, however, the group studied does not constitute a sample nor is it all-inclusive. While it had initially been intended to obtain such information from all jurisdictions, this proved not to be feasible. No findings were obtained for convicted offenders who were in provincial custody in Saskatchewan and Quebec. For the former province, agreement was reached to proceed with the survey, but other circumstances intervened resulting in a postponement in the collection of information. When it was feasible to do so, the Committee's cut-off date for the collection of research information had passed. In the instance of Quebec, while the provincial Ministry of Justice had effectively participated through le Comité de la protection de la jeunesse in the



National Child Protection Survey, unforeseen factors precluded a collaborative study from being undertaken in relation to convicted child sexual offenders. The Quebec Ministry of Justice was most co-operative in providing general statistics from its computerized records.

There is no central inventory for Canada, except for the register of homicides, of convicted offenders. If information on criminals convicted of particular crimes is sought, then this information must be obtained separately from each jurisdiction concerned — federal, provincial and territorial.

The main information retained in corrections, probation and parole records is offender, not victim-oriented. Only a few jurisdictions can efficiently identify information about the victims of crime. When the survey was conducted, information about convicted offenders accessible on a computerized basis was available in only four of 10 jurisdictions participating in the study (Government of Canada, eight provinces and the Yukon). In other jurisdictions, the identification of particular types of criminals must be made by means of a direct search of records, and as the Committee learned, these may be stored centrally, regionally, or be retained at corrections or supervisory locations. Where these records are maintained regionally, it is necessary to visit regional offices to assemble information about offenders. In instances where records are retained at local institutions, permission is required involving their recall to a central and/or regional location.

In each participating jurisdiction, the full co-operation of senior correctional officials was afforded; it is believed that all known cases of convicted child sexual offenders were identified. However, as some offenders may have been charged and convicted of other offences (e.g., break-and-enter) yet have committed a sexual offence, there is no surety that all such convicted offenders were in fact identified. Following the identification of this group, the Committee learned of another dilemma in relation to the identification of persons convicted of sexual offences against children. This problem, which is characteristic of the system of correctional services in Canada, is perhaps best exemplified by considering the information available about that group considered to have committed the most serious crimes — dangerous sexual offenders.

The Committee obtained access from the Correctional Service Canada to the files of all 'dangerous' offenders convicted of having committed sexual offences who were under supervision on February, 1982. Of 84 such cases, a detailed review indicated that information on the age of the victim was unknown for about one in eight (13.3 per cent). This review included both an assessment of the main dossiers and attached subsidiary files (e.g., police general occurrence records, transcripts of court decisions, pre-sentencing reports). In instances where information concerning age was missing, the victims were variously referred to as a "child", "toddler", "teenager" or "young person". Upon undertaking a detailed review of records in the jurisdictions where all convicted sexual offenders had been identified, the Committee found that the proportion of cases in which the age of the victim was unknown or could not be

accurately identified in correctional files ranged between 0.0 per cent to 59.3 per cent.

An additional reason why the group of 703 convicted child sexual offenders does not constitute a sample is that while in seven of 10 jurisdictions, information on all identified cases was obtained, in the remainder due to time constraints imposed by the Committee's schedule, it was not feasible to assemble information on all identified cases; in two instances, retrieval from a number of widely scattered regional and/or local offices imposed operational constraints.

The Committee recognizes the limitations inherent in the information obtained in the National Corrections Survey. Although complete information was obtained in seven of 10 jurisdictions for all known convicted child sexual offenders, even here there is no surety that all offenders who had committed sexual offences were identified. The information that was obtained, however, constitutes a sizeable group of those convicted child sexual offenders who were in custody or under supervision in all parts of Canada when the survey was undertaken. (The federal system includes convicted offenders from all provinces and territories). The information obtained about the 64 dangerous child sexual offenders is inclusive of all such persons who on sentencing were found to be dangerous.

**The Committee accepts the findings of the survey as likely being representative of a substantial proportion of all convicted offenders who were in custody or under supervision at the cut-off date set for the identification of cases in the National Corrections Survey. In the Committee's judgment, the survey's findings afford a sufficient basis permitting comparison between this group and suspected or known offenders identified in the Committee's other surveys.**

## References

### Chapter 36: The Research Record

- <sup>1</sup> Canada. *Report of the Royal Commission to Investigate the Penal System of Canada*. Ottawa: King's Printer, 1938.
- <sup>2</sup> *Ibid.*, p. 218.
- <sup>3</sup> *Ibid.*, p. 174
- <sup>4</sup> Canada. Department of Justice. *Report of a Committee Appointed to Inquire into the Principles and Procedures followed in the Remission Service of the Department of Justice of Canada*, Ottawa: Queen's Printer, 1956.
- <sup>5</sup> *Ibid.*, p. 20.
- <sup>6</sup> *Ibid.*, p. 88.
- <sup>7</sup> *Ibid.*, p. 48.
- <sup>8</sup> Canada. *Report of the Royal Commission on the Criminal Law Relating to Criminal Sexual Psychopaths*. Ottawa: Queen's Printer, 1958.
- <sup>9</sup> *Ibid.*, p. 70; see also, p. 72.
- <sup>10</sup> Canada. Department of the Solicitor General. *Report of the Canadian Committee on Corrections*. Ottawa: Queen's Printer, 1969.
- <sup>11</sup> *Ibid.*, p. 258.
- <sup>12</sup> Barbaree, H.E., W.L. Marshall and R.D. Lanthier, *Deviant Sexual Arousal in Rapists*, Kingston (mimeo) 1977.
- <sup>13</sup> Baxter, D.J., P.B. Malcolm and H.E. Barbaree, *Penile Response to Rape Stimuli: What Does It Tell Us About Rapists*, Kingston (mimeo), 1979.
- <sup>14</sup> Christie, M.M., W.L. Marshall and R.D. Lanthier, *A Descriptive Study of Incarcerated Rapists and Pedophiles*, Kingston (mimeo) 1977.
- <sup>15</sup> Davidson, P.R., *Penile Response Measurement: Operating Characteristics of the Parks Plethysmograph*, Kingston (mimeo), 1980.
- <sup>16</sup> Davidson, P.R. and D.J. Baxter, *Recidivism Patterns among Groups of Rapists*, Paper given at Annual Meeting of Canadian Psychological Association, 1982.
- <sup>17</sup> Freund, K., Diagnosing heterosexual pedophilia by means of a test for sexual interest, *Behaviour Research and Therapy*, 3: 229-234, 1965.
- <sup>18</sup> Freund, K., Diagnosing homo- or heterosexuality and erotic age-preference by means of a psychophysiological test, *Behaviour Research and Therapy*, 5: 209, 228, 1967.
- <sup>19</sup> Freund, K., Erotic preference in pedophilia, *Behaviour Research and Therapy*, 5: 339-348, 1967.
- <sup>20</sup> Freund, K., A Note on the use of the phallometric method of measuring mild sexual arousal in the male, *Behaviour Therapy*, 2: 223-228, 1971.
- <sup>21</sup> Freund, K., C.K. McKnight, R. Langevin and S. Cibiri, The female child as a surrogate object, *Archives of Sexual Behavior*, 2: 119-133, 1972.
- <sup>22</sup> Freund, K., H.R. Seeley, W.E. Marshall and E.K. Glinfort, Sexual Offenders Needing Special Assessment and/or Therapy, *Canadian Journal of Criminology and Corrections*, 14: 345-365, 1972.
- <sup>23</sup> Gigeroff, A.K., J.W. Mohr and R.E. Turner, Sex Offenders on Probation: I. The Exhibitionists, *Federal Probation*, 32(2): 18-21, 1968.
- <sup>24</sup> Gigeroff, A.K., J.W. Mohr and R.E. Turner, Sex Offenders on Probation: II. Heterosexual Pedophiles, *Federal Probation*, 32(4): 17-21, 1968.



- <sup>25</sup> Gigeroff, A.K., J.W. Mohr and R.E. Turner, Sex Offenders on Probation: III. Homosexuality, *Federal Probation*, 33(1): 36-39, 1969.
- <sup>26</sup> Gigeroff, A.K., J.W. Mohr and R.E. Turner, Sex Offenders on Probation: IV. Overview, *Federal Probation*, 33(2): 22-26, 1969.
- <sup>27</sup> Greenland, C., Dangerous Sexual Offenders in Canada, *Canadian Journal of Corrections*, 14: 44-54, 1972.
- <sup>28</sup> Hartley, T.C. and G.R. Parker, *Assertiveness Training in the Treatment of Sexual Offenders*, Abbotsford (mimeo), 1978.
- <sup>29</sup> Hartman, V., Some Observations of Group Psychotherapy with Paedophiles, *Canadian Journal of Corrections*, 3: 492-499, 1961.
- <sup>30</sup> Hartman, V., Notes on Group Psychotherapy with Pedophiles, *Canadian Psychiatric Association Journal*, 10: 283-288, 1965.
- <sup>31</sup> Hartman, V., Group Psychotherapy with Sexually Deviant Offenders (pedophiles) — the Group as an Instrument of Mutual Control, *Criminal Law Quarterly*, 7: 464-479, 1965.
- <sup>32</sup> Marcus, A.M., A Multidisciplinary Two Part Study of those Individuals Designated Dangerous Sexual Offenders held in Federal Custody in British Columbia, *Canadian Journal of Corrections*, 8: 90-103, 1966.
- <sup>33</sup> Marcus, A.M. and C. Conway, Dangerous Sexual Offender Project, *Canadian Journal of Corrections*, 11: 198-205, 1969.
- <sup>34</sup> Marcus, A.M. Encounters with the Dangerous Sexual Offender, *Canada's Mental Health*, 18: 9-14, 1970.
- <sup>35</sup> Marcus, A.M. and C. Conway, A Canadian Group Approach Study of Dangerous Sexual Offenders, *International Journal of Offender Therapy*, 5: 59-66, 1971.
- <sup>36</sup> Marshall, W.L., A Combined Treatment Method for Certain Sexual Deviations, *Behaviour Research and Therapy*, 9: 293-294, 1971.
- <sup>37</sup> Marshall, W.L., The Modification of Sexual Fantasies: A Combined Treatment Approach to the Reduction of Deviant Sexual Behaviour, *Behaviour Research and Therapy*, 11: 557-564, 1973.
- <sup>38</sup> Marshall, W.L., The Classical Conditioning of Sexual Attractiveness: A Report of Four Therapeutic Failures, *Behaviour Research and Therapy*, 12: 298-299, 1974.
- <sup>39</sup> Marshall, W.L., A Combined Treatment Approach to the Reduction of Multiple Fetish-related Behaviours, *Journal of Consulting Clinical Psychology*, 42: 613-616, 1974.
- <sup>40</sup> Marshall, W.L. and R.D. McKnight, An Integrated Treatment Program for Sexual Offenders, *Canadian Psychiatric Association Journal*, 20: 133-138, 1975.
- <sup>41</sup> Marshall, W.L. and M.M. Christie, Pedophilia and Aggression, *Criminal Justice and Behaviour*, 8: 145-158, 1981.
- <sup>42</sup> McCaldon, R.J., Rape, *Canadian Journal of Corrections*, 9: 37-59, 1967.
- <sup>43</sup> Mohr, J.W., Psychiatric Treatment: 3. The Contribution of Research to the Selection of Appropriate Alternatives for Sexual Offenders, *Criminal Law Quarterly*, 4: 317-328, 1961-62.
- <sup>44</sup> Mohr, J.W., The Pedophilias: Their Clinical, Social and Legal Implications, *Canadian Psychiatric Association Journal*, 7: 255-260, 1962.
- <sup>45</sup> Mohr, J.W., A Short Survey of Sexual Offenders in the Kingston Penitentiary, *Canadian Journal of Corrections*, 5: 176-179, 1963.
- <sup>46</sup> Mohr, J.W. R.E. Turner and M.B. Jerry, *Pedophilia and Exhibitionism*, Toronto: University of Toronto, 1964.
- <sup>47</sup> Mohr, J.W. and R.E. Turner, Sexual Deviations. Part IV -Pedophilia, *Applied Therapeutics*, 9: 362-365, 1967.
- <sup>48</sup> Quinsey, V.L., Methodological Issues in Evaluating the Effectiveness of Aversion Therapies for Institutionalized Child Molesters, *Canadian Psychologist*, 14: 350-361, 1973.
- <sup>49</sup> Quinsey, V.L., C.S. Steinman, S.G. Bergerson and T.F. Holmes, Penile Circumference, Skin Conductance, and Ranking Responses of Child Molesters and 'Normals' to Sexual and Non-Sexual Visual Stimuli, *Behaviour Therapy*, 6: 213-219, 1975.
- <sup>50</sup> Quinsey, V.L. and G.W. Varney, Modification of Preference in a Concurrent Schedule by Aversive Conditioning, *Bulletin of the Psychonomic Society*, 7: 211-213, 1976.

- <sup>51</sup> Quinsey, V.L. and S.G. Bergerson, and C.S. Steinman, Changes in Physiological and Verbal Responses of Child Molesters during Aversion Therapy, *Canadian Journal of Behavioural Science*, 8: 202-212, 1976.
- <sup>52</sup> Quinsey, V.L. and S.G. Bergerson, Instructional Control of Penile Circumference, *Behaviour Therapy*, 7: 489-493, 1976.
- <sup>53</sup> Quinsey, V.L., The Assessment and Treatment of Child Molesters: A Review, *Canadian Psychological Review*, 18: 204-220, 1977.
- <sup>54</sup> Roy, C. and A. Saad, *The Treatment of Sexual Offenders Within the Canadian Penitentiary System — A New Initiative*, Abbotsford (mimeo), 1975.
- <sup>55</sup> Searle, C.A., *A Study of Sexual Offenders in Canada and a Proposal for Treatment*, Ottawa: Canadian Penitentiary Service, 1974 (mimeo).
- <sup>56</sup> Turner, R.E., Treatment of the Sex Offender, *Criminal Law Quarterly* 3: 461-472, 1961.
- <sup>57</sup> West, D.J., C. Roy and F.L. Nichols, *Understanding Sexual Attacks*, London: Heineman, 1978.
- <sup>58</sup> Wormith, J.S., *A Survey of Incarcerated Sexual Offenders*, University of Saskatchewan (mimeo), 1982.
- <sup>59</sup> Quinsey, V.L., *op. cit.* (1977), p. 216.

## Chapter 37

# Sentencing

One of the most difficult tasks faced by Canadian judges is determining the appropriate sentence that an offender should receive on being convicted of a criminal offence, especially where the offence is of a sexual nature. This chapter reviews the general principles of sentencing in Canadian law and their application to adult offenders convicted of sexual offences. The unique circumstances of the offender and, to a lesser extent, of the offence he or she commits, underscore the importance of viewing sentencing as an individualized, human process.<sup>1</sup> Canadian courts tend to consider several objectives in sentencing an adult offender and the weight accorded to each will vary according to the circumstances of both the offender and the offence. There are four overarching sentencing objectives recognized by Canadian law:<sup>2</sup>

1. The protection of the public.
2. Retribution or punishment.
3. Deterrence.
4. The reformation and rehabilitation of the offender.

These general principles are not mutually exclusive; for example, it is often stated by judges that the “protection of the public” can best be achieved by a sentence that will promote the offender’s reformation and rehabilitation. Canadian jurisprudence on sentencing suggests rather that these principles need to be “wisely blended”<sup>3</sup> in reaching an appropriate conclusion with respect to sentence. As the Nova Scotia Court of Appeal has noted:<sup>4</sup>

[T]he relative weight or mix of the three basic factors — deterrence of the offender, deterrence of others, and rehabilitation and reform — varies not only with reference to the nature, history and character of the offender, but also with the kind of offence. And to the mixture in any given case must often be added a fourth factor . . . , namely, the need to express social repudiation and abhorrence of a particular crime by, to use a largely outmoded word, “punishment” of the offender.



## Protection of the Public

According to one legal commentator, it is well accepted by Canadian courts that the principal purpose of the criminal law process, and hence of sentencing, is the protection of the public.<sup>5</sup> "Public protection" has many aspects:<sup>6</sup>

If the defendant is imprisoned, he is removed from society at least temporarily, and the community is protected. Even if he is subjected to a program of rehabilitation by probation or otherwise, the ultimate aim is to protect society by making the defendant a responsible member of his community, thereby preventing his causing harm to society.

There are, however, cases in which the objective of public protection demands a sentence of extended incarceration, particularly where the offender committed a violent sexual assault.<sup>7</sup> The protection of the public as a primary sentencing objective takes its most stark form in the "dangerous offender" provisions of the *Criminal Code*, which authorize the indefinite detention of certain classes of offenders, including so-called "dangerous sexual offenders."

## Retribution or Punishment

The concept of retribution (namely, that a crime should be punished and that the punishment should fit the crime<sup>8</sup>) plays an important role in determining the range of sentences for a particular type of offence.<sup>9</sup> That retribution does not imply societal revenge<sup>10</sup> is evident from the Ontario Court of Appeal's decision in *R. v. Warner*.<sup>11</sup>

It should be said at once that the purpose of punishment for crime is not that, through the medium of a judge who is authorized by the law to impose it, vengeance may be wreaked upon the guilty for their crime, as though crime was private in character . . . Punishment . . . is the expression of the condemnation by the State of the wrong done to society. There must, therefore, always be a right proportion between the punishment imposed and the gravity of the offence. It is in that sense that it is said that certain crimes "deserve" certain punishments . . .

Where, however, an offender seriously violates fundamental social values, for example, in cases involving sexual offences against children, the offender's sentence will often be determined in a manner that expresses society's abhorrence and denunciation of the offenders conduct. In *R. v. W. and B.S.*,<sup>12</sup> the accused were convicted of several sexual offences which took place in the presence of, and sometimes with the participation of, two children aged eight and 13. The Ontario Court of Appeal, in imposing sentence, stated that "in such cases, the sentences should reflect fairly both the revulsion of society and its condemnation of conduct such as that displayed."<sup>13</sup>

# Deterrence

Deterrence as a sentencing objective has two, sometimes conflicting, aspects: specific deterrence, in which the sentence is formulated in the hope of deterring the offender from committing further offences; and general deterrence, which is premised on the view that the sanction an offender receives for his or her conduct should also be such as will deter others from emulating that conduct.

The aim of specific deterrence as a sentencing consideration is the imposition of a punishment on the offender which will deter him or her from committing a future crime. In assessing what sort of sentence will meet the aim of specific deterrence, the court should have regard to the individual offender, his or her prior criminal record, his or her attitude, and his or her prospects for reformation and rehabilitation.<sup>14</sup>

The objective of general deterrence is to deter others from emulating the conduct of the criminal offender, by demonstrating to them the nature of the sanction they can expect if they follow his or her example.<sup>15</sup> The theory of general deterrence is based on companion assumptions: first, that an offender's sentence will become known to those who might be tempted to engage in comparable criminal conduct and, second, that appreciation of this risk of punishment will thereby have an inhibiting effect on criminal activity.<sup>16</sup>

There is little evidence of the validity of general deterrence, concerning either the kinds of crime that can be deterred or the sorts of potential offenders that are amenable to the general threat of punishment.<sup>17</sup> Even so, general deterrence has been adopted by Canadian courts as one of the primary aims of sentencing. In *R. v. McKeachnie*,<sup>18</sup> for example, the Ontario Court of Appeal held (in a case involving an indecent assault on a young girl) that deterrence is the primary consideration where sexual offences against young children are concerned, and that the protection of the public is best secured by such an approach. The principle of general deterrence has also been considered of primary importance in sentences imposed for rape,<sup>19</sup> attempted rape,<sup>20</sup> indecent assault on a female,<sup>21</sup> sexual intercourse with a female under 14<sup>22</sup> and incest.<sup>23</sup>

# Rehabilitation

Canadian courts sometimes give precedence to the objective of rehabilitation of the offender when imposing sentence. Even so, the cases in which the offender's rehabilitation has been considered the paramount sentencing factor have not established general principles in this regard. Whether this approach is taken will depend on the circumstances of each case, and particularly on the court's assessment of an offender's prospects for reform.

The sentencing judgment in *R. v. Robertson*,<sup>24</sup> a case of homosexual pedophilia, is illustrative. The accused pleaded guilty to two counts of gross indecency and to one count of indecent assault on a male. He had sought psychiatric help prior to the commission of these offences, but had discontinued his treatment. At trial, the accused was sentenced to eight months' imprisonment. On appeal to the Ontario Court of Appeal, a sentence of time served (10 days) plus two years' probation was substituted. In substituting this sentence, the Court of Appeal emphasized the accused's evident rehabilitative prospects:<sup>25</sup>

It was urged upon us by the respondent that a term of imprisonment was needed to demonstrate the revulsion of the public for this type of offence and as a deterrent to this man and others like him . . . In our view, jail adds little by way of deterrence to persons with this type of propensity.

The important thing in this case is that there was a very positive pre-sentence report and medical report before the Court, and that report was to the effect that it was probable that through the medical treatment outlined in the document the appellant could be cured. This offered the base assurance to the community for its protection which is the primary purpose of the criminal law.

Rehabilitation is often the guiding sentencing consideration with respect to first offenders, particularly youthful first offenders. In these cases, the aim of rehabilitation is a factor both in deciding whether a custodial term will be imposed and in determining the appropriate length of the term of imprisonment.

## Nature and Length of the Sentence

In determining the sentencing objectives in a given case and the appropriate sentence in light of these objectives, Canadian courts typically consider a variety of factors arising from the circumstances of the offence. The Manitoba Court of Appeal has formulated a list of considerations which should be canvassed in imposing sentence:<sup>26</sup>

- The degree of premeditation involved.
- The circumstances accompanying the commission of the offence: the manner in which it was committed, the amount of violence involved, the employment of an offensive weapon and the degree of active participation by each offender.
- The gravity of the crime committed, of which the maximum punishment provided by statute is an indication.
- The attitude of the offender after the commission of the crime, as this serves to indicate the degree of criminality involved and throws some light on the character of the participant.
- The previous criminal record, if any, of the offender.
- The age, mode of life, character and personality of the offender.



- Any recommendation of the trial judge, any pre-sentence or probation officer's report, or any mitigating or other circumstances properly brought to the attention of the court.

These sentencing factors tend to fall within two sub-groups: those pertaining to the offender and those pertaining to the circumstances of the offence under consideration.

## Sentencing Factors Pertaining to the Offender

### Age

In the majority of cases, the offender's age influences the nature of the sentence imposed, particularly in regard to youthful offenders. The offender's age is especially pertinent to the court's determination of whether a custodial sentence should be imposed. According to one legal commentator, "the most common effect of youth of the offender is to indicate that individualized treatment will be appropriate. General deterrence is de-emphasized in sentencing youthful offenders: The preferred aims are rehabilitation and individual deterrence."<sup>27</sup>

Even so, the generally mitigating effect of the offender's youthful age may be outweighed by other considerations arising from the nature of the offence committed. If the offender, although young, has a lengthy criminal record for similar offences or the offence in question involved violence or the use of a weapon, the offender's youth will have a weaker mitigating effect on sentencing than otherwise.

### Previous Criminal Record

One of the most significant mitigating factors in sentencing is the offender's lack of a prior criminal record. It is well established that the accused's character prior to the commission of the offence may be considered at the sentencing stage;<sup>28</sup> accordingly, where the offender has not been convicted of prior criminal offences, the court typically is disposed to treat him or her more leniently than the circumstances of the offence may appear to warrant. That the court will tend to lean towards the imposition of an individualized as opposed to a "tariff" punishment<sup>29</sup> is illustrated by the comments of the Ontario Court of Appeal in *R. v. Stein*,<sup>30</sup> in which Mr. Justice Martin stated that:

... before imposing a custodial sentence upon a first offender the sentencing Court should explore the other dispositions which are open to him and only impose a custodial sentence where the circumstances are such, or the offence is of such gravity that no other sentence is appropriate.

Where less serious offences are concerned, for example, the offence of "indecent act", the offender's lack of a prior criminal record will sometimes

result in the offender being discharged either absolutely<sup>31</sup> or on conditions of probation. In offences involving more serious criminal infractions, the absence of a prior criminal record will not prevent the imposition of a custodial sentence in appropriate cases, but will usually effect the length of the imprisonment imposed.<sup>32</sup> That an offender's prior criminal record should generally be taken into account, and accorded a weight appropriate to the circumstances of the offence in question, is an accepted sentencing practice in Canada.<sup>33</sup>

## Mental Illness

Where an offender suffers from mental illness (short of the legal definition of insanity),<sup>34</sup> this may have either an aggravating or a mitigating effect on the sentence imposed. Apart from the "dangerous sexual offender" provisions in the *Criminal Code*, an accused's evident mental disorder will often result in the imposition of a more severe sentence. For example, in *R. v. D.*,<sup>35</sup> the accused raped his two step-daughters under circumstances described by the court as "savage, terrorizing and approaching stark horror". The accused had a prior conviction for incest and had been diagnosed as having a severe personality disorder. The court imposed sentences of 12 years' imprisonment on each count of rape, the sentences to run concurrently.

Where a court sentences an individual to a term of imprisonment, it cannot order that the offender receive treatment for a personality disorder while he or she is incarcerated. The court can only recommend to the correctional authorities that the offender receive such treatment.<sup>36</sup>

The offender's mental illness is more likely to be regarded as a mitigating factor in sentencing where it appears to the court that there is a real possibility that the offender can be rehabilitated through treatment. The sentencing judgment in *R. v. D.*<sup>37</sup> is illustrative. The accused pleaded guilty to two charges of indecent assault on a female. He had a history of mental disorder and showed an apparent need for psychiatric help. In sentencing the accused, the Nova Scotia Court of Appeal directed that he be placed on probation for two years, and that he undergo psychiatric treatment as a term of probation.

A similar approach was adopted by the Ontario Court of Appeal in *R. v. D.*,<sup>38</sup> a case involving indecent assaults on young girls. Prior to these offences, the accused had voluntarily sought treatment for his disorder, namely, heterosexual pedophilia. Evidence before the court indicated that continued, non-custodial treatment of the accused would likely effect a cure of his disorder. Accordingly, the Court varied the custodial sentence imposed at trial to a sentence of time served and a two year probationary period, with a condition that the offender continue to undergo psychiatric treatment.

## Mental Retardation

An offender's mental deficiency or retardation will usually act as a mitigating factor in sentencing, unless it is such as to render him or her a continuing and serious threat.<sup>39</sup> In *R. v. S.*,<sup>40</sup> for example, that the 17 year-old male accused had a mental age of only 12 largely accounts for the court's leniency in imposing a sentence of two months' imprisonment and 18 months' probation for his offence of indecent assault on a female. That the accused undergo psychiatric treatment was a condition of his probation.

## Entry of a Guilty Plea

The offender's plea of guilty will normally be regarded as a mitigating factor in sentencing, as it is considered to be in the public interest<sup>41</sup> and to indicate some measure of remorse on the offender's part.<sup>42</sup> According to Judge Salhany, however, this principle "is not of universal application and may be rejected by the court where the accused was inescapably caught in the commission of the crime."<sup>43</sup>

## Consequences of Imprisonment

It is generally acknowledged that a sentence of imprisonment may have severe "collateral" consequences for a sexual offender during his or her incarceration. The extent to which this should influence a court at the sentencing stage was considered in *R. v. Campbell*.<sup>44</sup> A provincial magistrate had imposed a sentence of 23 months' imprisonment on the offender, pursuant to his conviction under section 146(1) of the *Criminal Code* (sexual intercourse with a female under 14 years-old). The magistrate expressed his concern about what would happen to the offender if he were sent to a federal penitentiary, and accordingly, sentenced him to a term of imprisonment short enough to allow him to serve the sentence in a provincial institution. The Nova Scotia Court of Appeal increased the offender's sentence to five years' imprisonment, and stated that the magistrate had erred in taking into account the "possibility [that] a sexual offender such as the respondent may be physically harmed in a federal penitentiary. That may well be the case, but that is not a matter for a court to take into account. The adequacy of the penal institutions and their ability to safeguard inmates is a matter for the officials of the penitentiary service and for Parliament."<sup>45</sup>

Recognition of the convicted sexual offender's unpleasant prospects while serving a penitentiary sentence may, however, influence the length of the sentence imposed. In *R. v. Piche, Caplette and Jones*,<sup>46</sup> the court stated that the sentences imposed on three accused involved in the homosexual rape of a fellow inmate:

... would have been much longer but for the fact that these accused would suffer indignities and additional punishment at the hands of other prisoners,



and would have to serve their sentences “in the hole” (segregated from the main prison population) for their protection.

## Sentencing Factors Pertaining to the Circumstances of the Offence

### Use of Violence

A crucial factor in the sentencing of sexual offenders is the degree of violence used in the commission of the offence. Violence, particularly when accompanied by the offender’s employment of a weapon, is invariably an aggravating factor in sentences imposed on sexual offenders.<sup>47</sup>

### Premeditation and Planning

In general, the greater the degree of premeditation and planning involved in the commission of the offence, the more serious the offence will be regarded by the court. Correspondingly, that the victim may, in the court’s view, have led the offender to believe that sex would be the likely result of their social encounter may have the effect of mitigating the offender’s sentence.<sup>48</sup>

### Offences Committed by Groups

Particularly in the sentencing of sexual offenders, that an accused has acted in concert with others in committing a sexual offence is treated as an aggravating factor. In *R. v. Morrissette*,<sup>49</sup> the Saskatchewan Court of Appeal stated that, although rape is always a serious offence, it is even more serious where two or more men assault a female. Further, the court will usually be inclined to impose a heavier sentence on the instigator of a gang attack than on his confederates.<sup>50</sup>

### Breach of a Position of Trust

Where an accused flagrantly breaches a position of trust in committing a sexual offence, the court will typically consider such breach of trust an aggravating factor in sentencing the accused. A common breach of trust that arises in sexual offences is that involving a parent or someone with a special ascendancy over a young person. Situations involving serious breaches of trust in this context are by no means restricted to offences involving incest<sup>51</sup> between a father and his daughter; comparable abuses of authority by offenders have arisen in prosecutions for gross indecency,<sup>52</sup> indecent assault on a male,<sup>53</sup> indecent assault on a female,<sup>54</sup> and rape<sup>55</sup> among others.<sup>56</sup> Even where no familial

ties or other special relationships exist between the offender and a young victim, the courts have acknowledged the natural ascendancy of an adult over a child and have tended to sentence such offenders more severely.<sup>57</sup>

## Pre-sentence Reports

Pursuant to section 662 of the *Criminal Code*, the court may require the preparation and presentation of a pre-sentence report, in order to assist the court in determining an appropriate sentence for the offender and, more particularly, in determining whether the offender should receive a discharge. Whether or not a pre-sentence report will be requested with respect to a given offender is in the discretion of the court. In general, a pre-sentence report will be ordered where the court feels that it needs additional information on an offender before imposing sentence.<sup>58</sup> Where an offender challenges or denies a statement contained in the pre-sentence report, the onus is on the Crown to prove the accuracy of the statement. Failing such proof, the challenged information should be disregarded. Further, a statement in the pre-sentence report which alleges that the accused is suspected of other crimes for which he or she was not charged should not be considered in imposing sentence.<sup>59</sup>

Although the *Criminal Code* does not provide guidelines concerning the proper contents of pre-sentence reports, certain types of information are expected to be standard inclusions: the offender's level of education, criminal record, family status, employment record, and social and medical history. Recent legal judgments in Canada have formulated broad guidelines in this regard. In *R. v. Rudyk*,<sup>60</sup> the court stated that:

... a pre-sentence report (should) be confined to its very necessary and salutary role of portraying the background, character and circumstances of the person convicted. It should not, however, contain the investigator's impressions of the facts relating to the offence charged, whether based on information received from the accused, the police or other witnesses, and whether favourable or unfavourable to the accused.

In *R. v. Bartkow*,<sup>61</sup> MacKeigan made the following remarks on the proper function of pre-sentence reports in sentencing an offender:<sup>62</sup>

Their function is to supply a picture of the accused as a person in society — his background, family, education, employment record, physical and mental health, associates and social activities, and potentialities and motivation. Their function is not to supply evidence of criminal offences or details of a criminal record or to tell the court what sentence should be imposed.

## Sentencing Alternatives to Imprisonment

The *Criminal Code* provides the sentencing court with several alternatives to the sanction of imprisonment, namely, fines, absolute or conditional discharges, and the suspension of the passing of sentence, with probationary conditions.

## Fines

The imposition of a fine is one sentencing alternative to imprisonment. The general principle is that, unless the offence of which the offender was convicted specifies a minimum term of imprisonment, the court may sentence the offender to a fine. This principle is significantly modified, however, by section 646(2) of the *Criminal Code*, which provides that an accused who is convicted of an indictable offence punishable with imprisonment for more than five years may be fined in addition to, but not in lieu of, any other punishment that is authorized. Accordingly, this section precludes the court from imposing a fine as the sole punishment for most sexual offences. A fine may be imposed as the sole punishment for some sexual offences, however, most notably for the offence of "indecent act" (which is the criminal charge most often used in cases of male exposure).

Canadian courts have enunciated general principles concerning the use of fines in sentencing an offender:

The amount of the fine should not be excessive, neither in regard to the financial means of the offender nor in regard to the gravity of the offence committed.<sup>63</sup>

Any term of imprisonment imposed as an alternative to payment of a fine should not be out of proportion to the fine.<sup>64</sup>

Where the court imposes a fine, it may allow the offender an appropriate length of time in which to pay the amount specified, but the court cannot order that the offender be detained in custody pending payment of the fine.<sup>65</sup>

## Discharge Provisions

The *Canadian Committee on Corrections* advocated in 1969 that:<sup>66</sup>

... there should be provisions that permit the court to deal with first offenders charged with a minor offence in such a way that would avoid the damaging consequences of the existence of a criminal record.

A conviction against a first offender establishes a record that can carry with it life-long consequences that continue long after rehabilitation is complete and risk to the community is no greater from this individual than from the average citizen. In fact, the record may be the result of what the individual considered a prank and the individual may at no time have been a danger to society. In other cases, the exposure to public trial has a deterrent effect in itself, so that the imposition of additional punishment is superfluous, costly and damaging to both the individual and the community.

An alternative should be open to the court, at this preconviction stage, so that action appropriate to the individual case may be planned, including a period of probation to test the court's assessment of the offender. This should take the form of absolute discharge, either with or without conditions.

In furtherance of these recommendations, the *Criminal Code* was amended in 1972 to provide for the absolute or conditional discharge of an offender. Section 662.1 of the *Criminal Code* authorizes the court to grant an



offender an absolute or conditional discharge, where circumstances warrant, provided the offence is one for which there is no specified minimum punishment and the offence is punishable by less than 14 years' imprisonment. Before granting an accused a discharge, the court must consider that such a disposition is both in the accused's best interests and is not contrary to the public interest.

In commenting on the requirement that a discharge be "in the best interests of the accused," the Ontario Court of Appeal has stated:<sup>67</sup>

I take this to mean that deterrence of the offender himself is not a relevant consideration in the circumstances, except to the extent required by conditions in a probation order. Nor is his rehabilitation through correctional or treatment centres, except to the same extent. Normally, he will be a person of good character, or at least such character that the entry of a conviction against him may have significant repercussions.

It is apparent that discharges are sometimes used in sentencing an offender for the offence of indecent act, for example, in cases of "streaking"<sup>68</sup> and "mooning".<sup>69</sup> In *R. v. Miceli*,<sup>70</sup> the accused was observed masturbating himself in a department store. The court, in granting him an absolute discharge, emphasized the fact that this was a first offence and that the accused's employment prospects would be jeopardized by the existence of a criminal record.

Where the granting of a discharge is deemed to be in the accused's best interests, the court must go on to consider whether a discharge in the circumstances would not be contrary to the public interest. The need to deter others who may be disposed to commit a similar offence is a proper consideration; the more serious the offence committed by an accused, the less the likelihood that a discharge will be appropriate. Exceptions to this rule, however, do arise. In *R. v. Konzelman*,<sup>71</sup> the accused was found guilty of indecently assaulting a woman. Evidently, the accused had, pursuant to a bet with some friends, grabbed the complainant's breasts and shook them. The Manitoba Court of Appeal substituted a conditional discharge and one year's probation for the suspended sentence imposed at trial.

The British Columbia Court of Appeal in *R. v. Fallofield*<sup>72</sup> enunciated eight general principles relating to the use of the discharge provisions in section 662.1 of the *Criminal Code*:

1. The section may be used in respect of any offence other than an offence for which a minimum punishment is prescribed by law or the offence is punishable by imprisonment for 14 years or for life.
2. The section contemplates the commission of an offence. There is nothing in the language that limits it to a technical or trivial violation.
3. Of the two conditions precedent to the exercise of the jurisdiction, the first is that the Court must consider that it is in the best interests of the accused that he should be discharged either absolutely or upon condition. If it is not in the best interests of the accused, that, of course, is the end of

the matter. If it is decided that it is in the best interests of the accused, then that brings the next consideration into operation.

4. The second condition precedent is that the Court must consider that a grant of discharge is not contrary to the public interest.
5. Generally, the first condition would presuppose that the accused is a person of good character, without previous conviction, that it is not necessary to enter a conviction against him in order to deter him from future offences or to rehabilitate him, and that the entry of a conviction against him may have significant adverse repercussions.
6. In the context of the second condition the public interest in the deterrence of others, while it must be given due weight, does not preclude the judicious use of the discharge provisions.
7. The powers given by s. 662.1 should not be exercised as an alternative to probation or suspended sentence.
8. Section 662.1 should not be applied routinely to any particular offence. This may result in an apparent lack of uniformity in the application of the discharge provisions. This lack will be more apparent than real and will stem from the differences in the circumstances of cases.<sup>73</sup>

## Suspended Sentence and Probation

Section 663 of the *Criminal Code* discloses two basic situations in which a sexual offender may be directed to comply with the terms of a probation order: where the passing of sentence is suspended, and where the sentence is either a fine or term of imprisonment not exceeding two years.

A suspended sentence implies the suspension of the passing of sentence, not the suspension of the operation of the sentence.<sup>74</sup> The suspended sentence is often imposed where the court considers that the accused is unlikely to commit a further, similar offence and will benefit from conditions of probation. For example, in *R. v. C*,<sup>75</sup> the court imposed a suspended sentence and probationary terms on a man who had pleaded guilty to incest. The court, noting that a term of imprisonment would probably cost the offender his job, considered that the evidence indicated that the accused was unlikely to commit such an offence again. In the probation order, the offender was required to undergo psychiatric evaluation, and treatment, if necessary.

Mewett, in discussing probation, has stated that:

... the object of probation is to provide for some method of dealing with those people who can be easily rehabilitated and who, with proper guidance and control, are unlikely to become criminals.<sup>76</sup>

A term of probation (which may not continue in force for more than three years)<sup>77</sup> may be imposed in addition to either a fine or imprisonment, but not in addition to both.<sup>78</sup> In determining whether probation is an appropriate disposition, the court will have regard to the nature of the offence, the circumstances

of its commission, the offender's age, character and antecedents.<sup>79</sup> A pre-sentence report may be ordered to assist the court in making this determination.

Some offences, by their very nature, are considered unsuitable for disposition of the offender by way of probation.<sup>80</sup> Even so, the appropriateness of probation tends to be influenced more by the circumstances of the offence than by the type of offence committed. In *R. v. St. Onge*,<sup>81</sup> for example, the charge against the accused was sexual intercourse with a female under 14 years of age. The 13 year-old complainant had apparently instigated the act of sexual intercourse; the court suspended the passing of the accused's sentence and put him on probation for one year.

Probation orders are commonly imposed on young, first offenders where the potential for reform is considered high.<sup>82</sup> A sentence incorporating probationary terms is often ordered where the court considers that the offender would benefit from some form of treatment, be it for psychiatric disorder<sup>83</sup> alcohol abuse<sup>84</sup> or drug abuse.

The frequent use of probation in the sentencing of non-violent sexual offenders<sup>85</sup> signifies the judicial adoption of the "treatment model" in this context.<sup>86</sup> For example, in *R. v. Doran*,<sup>87</sup> a school teacher convicted on two counts of indecently assaulting young girls was originally sentenced to a prison term of 12 months' definite and six months' indeterminate. On appeal, this sentence was varied to time served, and the offender was placed on two years' probation on the condition that he undergo psychiatric treatment on an outpatient basis. In substituting this sentence, the Court of Appeal stated:<sup>88</sup>

We have before us material not presented to the trial judge which disclosed that, if the appellant were to continue his treatment with Dr. Tisdall and also take treatment at the Clarke Institute of Psychiatry, the chance of being cured is favourable. If such treatment outside the prison is likely to effect such a cure, and his imprisonment may not, we think that it is in the general interest of society to have him treated rather than imprisoned.

In reference to these judicial remarks, Schiffer has commented:<sup>89</sup>

This statement represents what is perhaps the classic rationale behind the use of probationary psychiatric treatment. It articulates the widely held belief that psychotherapy, if it is to be effective at all, is most properly conducted outside the prison environment. Recognizing that the locking of an individual behind bars may not be the ideal way to effect his healthy readjustment to society, it advances an alternative method of psychic rehabilitation which, though coerced, seems rather more workable.

## Imprisonment

Section 659 of the *Criminal Code* governs the institutional placement of convicted offenders who are sentenced to a term of imprisonment. In general, prison terms of less than two years are served in provincial correctional institutions and prison terms of two years or more are served in federal penitentiaries.<sup>90</sup> Provincial institutions vary widely in the education, release and



treatment opportunities available to inmates.<sup>91</sup> Moreover, in some provinces, provincial correctional institutions are used to house both convicted offenders and those awaiting trial or appeal.<sup>92</sup>

An offender who has been sentenced to imprisonment for a term of two years or more must, subject to federal-provincial transfer agreements, serve his or her term in a federal penitentiary. There are three categories of federal prisons: maximum security; medium security; and minimum security. Following the handing down of sentence, the offender is classified for placement purposes; the offender's length of sentence, likelihood of escape and potential danger to the community if successful in an escape attempt are considered at this stage.<sup>93</sup> It is in the context of these custodial arrangements that sexual offenders who are deemed to require protection from other inmates may be placed in protective custody.

## Provision of Treatment

There is no authority in the *Criminal Code* which enables a sentencing court, in imposing a term of imprisonment, to direct that the accused should receive treatment while incarcerated.<sup>94</sup> The court may only make recommendations concerning the provision of treatment to an offender while he or she is in prison. In *R. v. Leech*,<sup>95</sup> for example, the court, in imposing a sentence of life imprisonment for offences of rape and buggery, considered that "whilst under sentence the accused, though not legally insane, should be considered a suitable patient for psychiatric care."<sup>96</sup>

The problem with such judicial recommendations is that they are not binding upon penitentiary authorities, and consequently, the sentencing court cannot be confident that treatment will be made available to the offender.<sup>97</sup> According to the Law Reform Commission of Canada:<sup>98</sup>

Sometimes such recommendations are followed, often they are not. Although it is theoretically possible for prison authorities to transfer mentally disordered offenders to mental hospitals, in practice, such transfers are rare. Because of the sparse facilities for psychiatric treatment in prisons generally, many prisoners suffering from serious mental disorders are detained without the prospect for treatment.

Pursuant to section 19(1) of the *Penitentiary Act*,<sup>99</sup> the federal Solicitor General may, with the approval of the Governor in Council, enter into agreements with the government of any province to provide for the custody, in a mental hospital or other institution, of persons found to be mentally ill or mentally defective at any time during their confinement in a penitentiary. Although judges sometimes recommend, at the sentencing stage, that the offender receive treatment under the provisions of section 19, these recommendations similarly have no binding effect on penitentiary authorities.

## Remission and Mandatory Supervision

Remission shortens the time that inmates spend in custody, so that even if an inmate is not granted parole, he or she may nonetheless be released before the expiration of the sentence.<sup>100</sup> Prior to 1977, an inmate was eligible for two different types of remission: statutory remission and earned remission. Statutory remission, which amounted to one quarter of the term to which the inmate was sentenced, was credited upon entry to an institution and could be forfeited as a result of institutional infractions. Earned remission (which operated over and above the credited statutory remission) could be achieved where an inmate was of good behaviour. It accumulated at a rate of three days per calendar month and could not be lost.

In 1977, statutory remission was abolished, and the *Penitentiary Act* was amended to provide that, prospectively, all remission must be earned. A new formula for earned remission was introduced and incorporated in section 24 of the *Penitentiary Act*.<sup>101</sup>

24(1) Subject to section 24.2, every inmate may be credited with fifteen days of remission of his sentence in respect of each month and with a number of days calculated on a pro rata basis in respect of each incomplete month during which he has applied himself industriously, as determined in accordance with any rules made by the Commissioner in that behalf, to the program of the penitentiary in which he is imprisoned.

Section 24.1 (1) of the Act provides that every inmate may forfeit earned remission where he or she is convicted of a disciplinary offence. The earned remission may be forfeited in whole or in part, but no more than 30 days may be forfeited without the concurrence of the Commissioner or an officer of the Correctional Service Canada designated by him, or more than 90 days without the concurrence of the Minister. Section 24.2 provides for the maximum remission that can be gained by inmates who had accumulated statutory remission before its abolition.<sup>102</sup>

Accordingly, and notwithstanding that an inmate has not been paroled, he or she may nonetheless accumulate earned remission to the extent of one third of the total sentence of imprisonment and be released on “mandatory supervision” after serving approximately two-thirds of the sentence. The inmate’s entitlement to be released from custody on mandatory supervision as a result of accumulated earned remission is a matter over which the National Parole Board has been granted no legal authority.<sup>103</sup> Under the provisions of the *Parole Act*,<sup>104</sup> the National Parole Board’s supervisory role and corollary legal powers concerning inmates on mandatory supervision attaches only after the inmate has been released. The Board cannot legally apprehend and recommit into custody an inmate immediately after his or her release on mandatory supervision (a practice known colloquially as “gating”) on the grounds that the inmate should not be at large; section 16 of the *Parole Act* confers no such power.<sup>105</sup>

Legislation introduced in the Senate (Bill S-32) would confer on the National Parole Board wider powers where an inmate breaches conditions of mandatory supervision after release from prison, but does not address the more difficult and central issue: To what extent should the National Parole Board be legally authorized to prevent inmates deemed to be a considerable risk to society from being released on mandatory supervision at all?

## Parole

Unlike an inmate's legal entitlement to be released on mandatory supervision where he or she has accumulated earned remission (but has not been paroled), the decision to parole an inmate is a discretionary one made by a parole board. The National Parole Board, in addition to its role concerning federal inmates, oversees applications for parole from provincial parole applicants in those provinces which do not have a parole board. Determining the parole eligibility date of an inmate is a complex process,<sup>106</sup> and depends primarily on the nature of the inmate's offence and the length of sentence the inmate is serving.<sup>107</sup> In general, inmates are eligible for parole after having served one-third of their sentence or seven years, whichever is the lesser (but at least nine months if a federal inmate). Provincial inmates serving a sentence of less than two years are eligible for parole after having served one third of their sentence.<sup>108</sup> Inmates under preventive detention as "dangerous offenders" are eligible for parole after three years, with a mandatory review every two years thereafter.<sup>109</sup> An inmate's eligibility for day parole is contingent on his or her parole eligibility date.<sup>110</sup>

Under the provisions of the *Parole Act*,<sup>111</sup> the National Parole Board is authorized, in its discretion, to grant, refuse to grant, or revoke an inmate's parole. Section 10 (1) of the Act provides that the Board may grant parole to an inmate subject to any terms or conditions desirable, if the Board considers that:

1. In the case of a grant of parole other than day parole, the inmate has derived the maximum benefit from imprisonment.
2. The reform and rehabilitation of the inmate will be aided by the grant of parole.
3. The release of the inmate on parole would not constitute an undue risk to society.

If the Board decides to grant parole, the inmate will be released under specified conditions and supervision. An inmate whose parole has been denied may appeal this decision and, even if unsuccessful, may re-apply for parole at a later date.



## Community Residential Centres

Implicit in the forms of conditional release is the legislative recognition that the “controlled reintegration” of offenders into society, under conditions of parole or mandatory supervision, is the most realistic means of helping offenders make the transition from life in prison to life in the community. In recommending a form of statutory conditional release on which the current “mandatory supervision” provisions were based, the Report of the *Canadian Committee on Corrections* stated:<sup>112</sup>

The aim should be to develop a system under which almost everyone would be released under some form of supervision. It is best if he is released at the point at which the chances for his successful reintroduction to community life would be highest. This means the extension of parole as we now know it to every case possible.

However, there will be many who will not qualify for parole and they should also be subject to supervision. This can be accomplished by making the period of statutory remission a period of supervision in the community, subject to the same procedures that apply to parole. This means the releasee would be subject to conditions and to return to complete his sentence in the institution if he violates those provisions. He should also receive the same kind of assistance and control through supervision that applies to parolees.

Community-based residential centres (privately funded) and community corrections centres (publicly funded) are intended to assist former inmates in this difficult period of transition and serve a variety of functions.<sup>113</sup>

[S]ome cater exclusively to those on day parole or a temporary absence; others assist transients, alcoholics, drug addicts and the like who may be ex-offenders; some centres are operated by governmental agencies; those in the private sector may rely solely upon charitable donations with others receiving some funding from government in the form of grants-in-aid or fees for service.

The Task Force on Community-Based Residential Centres in 1973 identified 156 such centres;<sup>114</sup> by 1975, there were 218 in existence.<sup>115</sup>

## Dangerous Offenders

Legislation relating to special classes of offenders deemed to warrant preventive detention has existed in Canada since 1947<sup>116</sup> and substantial changes were introduced in 1961 and 1977.<sup>117</sup> This review considers the current “dangerous offender” provisions proclaimed in force on October 16, 1977, with particular emphasis on those relating to sexual offenders.

Part XXI of the *Criminal Code* contains the statutory provisions authorizing the preventive detention of offenders whose conduct meets the criteria specified in that part. Central to these provisions is the definition of a “serious personal injury offence”; section 687 of the *Criminal Code* defines a “serious personal injury offence as:

(a) an indictable offence (other than high treason, treason, first degree murder or second degree murder) involving

- (i) the use or attempted use of violence against another person, or
- (ii) conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage upon another person,

and for which the offender may be sentenced to imprisonment for ten years or more, or

(b) an offence or attempt to commit an offence mentioned in section 246.1 (sexual assault), 246.2 (sexual assault with a weapon, threats to a third party or causing bodily harm) or 246.3 (aggravated sexual assault).

An application by the Crown to have an offender found to be a dangerous offender must be brought after his conviction for an offence, but before the offender is sentenced.<sup>118</sup> The Crown must prove beyond a reasonable doubt<sup>119</sup> that:

... the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (a) of the definition of that expression in section 687 and the offender constitutes a threat to the life, safety or physical or mental well-being of other persons on the basis of evidence establishing

- (i) a pattern of repetitive behaviour by the offender, of which the offence for which he has been convicted forms a part, showing a failure to restrain his behaviour and a likelihood of his causing death or injury to other persons, or inflicting severe psychological damage upon other persons, through failure in the future to restrain his behaviour,
- (ii) a pattern of persistent aggressive behaviour by the offender, of which the offence for which he has been convicted forms a part, showing a substantial degree of indifference on the part of the offender as to the reasonably foreseeable consequences to other persons of his behaviour, or
- (iii) any behaviour by the offender, associated with the offence for which he has been convicted, that is of such a brutal nature as to compel the conclusion that his behaviour in the future is unlikely to be inhibited by normal standards of behavioural restraint, or

(b) that the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (b) of the definition of that expression in section 687 and the offender, by his conduct in any sexual matter including that involved in the commission of the offence for which he has been convicted, has shown a failure to control his sexual impulses and a likelihood of his causing injury, pain or other evil to other persons through failure in the future to control his sexual impulses.<sup>120</sup>

Where the Crown discharges its burden of proof, section 688 provides that "the court may find the offender to be a dangerous offender and may thereupon impose a sentence of detention in a penitentiary for an indeterminate period, in lieu of any other sentence that might be imposed for the offence for which the offender has been convicted."<sup>121</sup> Where the court does find that the accused is a "dangerous offender" within the legal meaning of that phrase, the

court nonetheless retains a discretion whether or not to impose the sentence of indeterminate imprisonment.<sup>122</sup> Where a sentence of indeterminate imprisonment is imposed, a further, definite term of imprisonment may not be made consecutive to it.<sup>123</sup>

Section 689 provides that the Attorney General of the province in which the offence was tried must consent to the making of the application; that such application must be heard and determined by the court in the absence of a jury; and that no such application shall be heard unless at least seven days' notice has been given to the offender by the prosecutor, following the making of the application, outlining the basis on which the application is intended to be founded.

On the hearing of the application, the court is required to hear the evidence of at least two psychiatrists, one of whom is nominated by the prosecution and the other by the offender. If the offender fails or refuses to nominate a psychiatrist, the court is required to nominate one on his behalf.<sup>124</sup> In addition to this mandatory psychiatric testimony, the court is required to hear "all other evidence that, in its opinion, is relevant, including the evidence of any psychologist or criminologist called as a witness by the prosecution or the offender."<sup>125</sup> Evidence of the offender's character and reputation may also be admitted for the purpose of determining whether the offender is or is not a dangerous offender.<sup>126</sup> Prior to the hearing, the court has the power to direct the offender to attend for observation or, where necessary, to remand him or her in custody for this purpose.<sup>127</sup>

Sections 694 and 695.1 of the *Criminal Code* outline the rights of appeal of the offender and the prosecution in this context, and the offender's parole status (which varies depending on whether the sentence of indefinite detention was imposed before or after the 1977 amendments came into force). Finally, section 695 provides that, where a court finds an offender to be a dangerous offender and imposes a sentence of detention for an indeterminate period, the court must order that "a copy of all reports or testimony given by psychiatrists, psychologists or criminologists and any observations of the court with respect to the reasons for the sentence, together with a transcript of the trial of the dangerous offender be forwarded to the Solicitor General of Canada for his information."

## Dangerous Sexual Offender Applications

The purpose of the *Criminal Code* provisions relating to dangerous sexual offenders has been described by the Supreme Court of Canada as follows: "to protect persons from becoming the victims of those whose failure to control their sexual impulses renders them a source of danger."<sup>128</sup> As section 688 makes clear, an offender convicted of a sexual offence that meets the criteria of a "serious personal injury offence" in section 687 may be deemed a dangerous offender under the provisions of either section 688 (a) or section 688 (b). Even



so, the criteria in section 688 (b) are specifically pertinent to sexual offenders; the great majority of dangerous offender applications concerning sexual offenders are brought pursuant to the provisions of section 688 (b).

The group of sexual offences considered to be “serious personal injury offences” has changed somewhat over the years. Prior to the proclamation of Part XXI of the *Criminal Code* in October, 1977, a conviction for the offences of or attempts to commit buggery and bestiality would ground dangerous sexual offender applications. These two offences, however, were not carried over into the 1977 amendments. Prior to the January 1983 amendments, an offence or attempt to commit an offence of: rape, indecent assault on a female, indecent assault on a male, sexual intercourse with a female under 14 or 14 and 15 years-old, and gross indecency, was considered to be a “serious personal injury offence” rendering an offender eligible for preventive detention.

Further changes resulted from the restructuring of assaultive sexual offences by the 1983 amendments, which define a “serious personal injury offence” to mean the three forms of sexual assault described in sections 246.1, 246.2, and 246.3 of the *Criminal Code*. It is unclear whether the omission of the offences of unlawful sexual intercourse (which can only be committed against girls either under 14, or 14 or 15) and gross indecency (which often relates to cases of homosexual or heterosexual pedophilia) resulted from a policy decision to restrict the preventive detention provisions to forms of sexual *assault* (thereby tending to exclude other forms of sexual activity involving young persons), or from an oversight in legislative drafting.

The Alberta Supreme Court in *R. v. Butler* set forth the salient issues addressed in a dangerous sexual offender application:<sup>129</sup>

A dangerous sexual offender means a person who, by his conduct in any sexual matter, has shown a failure to control his sexual impulses and is likely to cause injury, pain or other evil to any person through failure in the future to control his sexual impulses. There are, therefore, three issues into which the Court must inquire, namely:

1. Has the respondent by his sexual conduct in sexual matters shown a failure to control his sexual impulses?
2. If so, is he likely in the future to show a similar failure?
3. If so, is he likely to cause injury, pain or other evil to any person?

Each of these must be proven beyond a reasonable doubt.

## Failure to Control Sexual Impulses

The element of “control” in the statutory phrase, “a failure to control his sexual impulses,” has been judicially construed to imply the exercise of restraint or direction upon free action, or the capacity to dominate, command, or overpower one’s impulses.<sup>130</sup> Accordingly, a sexual impulse is not controlled when it is gratified.<sup>131</sup> In *R. v. McAmmond*,<sup>132</sup> it was submitted on behalf of the offender that he possessed the requisite control. The submission was founded

on the basis that, when the seven year-old complainant requested that he stop indecently assaulting her, he belatedly did so. The Manitoba Court of Appeal considered that the offender's putative "control" evidenced itself only after he had molested the child and satisfied whatever sexual impulses motivated him. In reference to the offender's further submission that, for a three or four year prior period, he had not committed any act of sexual deviation and thereby had manifested sexual control, the Court relied on a psychiatrist's assessment that this period was less evidence of control than of the unavailability of an individual to be accosted.

## Likelihood of Causing Injury, Pain or Other Evil

A sexual offender convicted of a "serious personal injury offence" (section 687) may be sentenced to preventive detention on a dangerous offences' application if, "by his conduct in any sexual matter including that involved in the commission of the offence for which he has been convicted, has shown a failure to control his sexual impulses and a likelihood of his causing injury, pain or other evil to other persons through failure in the future to control his sexual impulses" (section 688(b)). While the test of "future likelihood" has proven intractable both medically and legally,<sup>133</sup> the sorts of harms whose reoccurrence is sought to be prevented have been broadly construed by Canadian courts, particularly where young victims are concerned. The case of *R. v. Dwyer*<sup>134</sup> is illustrative. The offender had a lengthy record of offences of gross indecency and indecent assault on a male. In commenting on the meaning of "evil" in this context, the Alberta Court of Appeal stated:<sup>135</sup>

Parliament has not seen fit to define "evil" and in construing the word for the purposes of [s. 688] a Court ought not by judicial pronouncements to narrow its scope and meaning beyond the necessities of the context in which it is used. The public interest looms large here. The sections have to do with sentencing, and by the very use of the words "preventive detention" in Part XXI of the *Criminal Code* in which the sections appear, the public interest primarily to be served is that aspect which gives weight to the protection of the public . . . In general understanding, when "evil" is used as a noun it usually connotes moral badness or depravity. In the context of the sections and the circumstances of the present case, I think it must be taken to mean evil consequent on the commission of any offence within the second category of the grouping in *Klippert v. The Queen*, particularly in so far as it involves young boys. It is not disputed that the offences on which Dwyer was convicted are evil in the general understanding.

The words "other evil" are not necessarily related to injury and pain and, accordingly, damage caused to young persons' morals, especially where it is such as could lead them into male prostitution or other behaviours that exploit them, is a form of that evil.<sup>136</sup> It is not necessary that young persons be physically harmed by the offender, if they were patently exploited sexually by him.<sup>137</sup>

The most crucial aspect of dangerous offender proceedings, and undoubtedly the most problematic, is the question of the offender's "likelihood of . . .



causing injury, pain or other evil to other persons through failure in the future to control his sexual impulses".<sup>138</sup> It is the present likelihood of the sexual offender's future conduct of which the court must be satisfied beyond a reasonable doubt;<sup>139</sup> it is not necessary that the court be satisfied that the offender will in fact re-offend in the manner provided.<sup>140</sup>

The mandatory psychiatric testimony in dangerous offender proceedings is intended to provide the court with guidance on this issue. Even so, some Canadian courts have vigorously challenged the reliability and validity of psychiatric prediction techniques. In *R. v. Butler*,<sup>141</sup> a case in which the Crown's dangerous offender application was unsuccessful, the Supreme Court of Alberta remarked:<sup>142</sup>

It is clear that the state of the art of predicting dangerousness in this area of the discipline of psychiatric medicine leaves much to be desired. It is one of the least developed areas. To predict dangerousness is, in itself, dangerous. The profession over-predicts.

A member of that province's Court of Appeal has expressed comparable scepticism:<sup>143</sup>

Psychiatry in its present stage is far from an exact science in predicting human behaviour, whether the behaviour is to be given such treatment in the future as may be thought to help aberrations, or is to be allowed to go unchecked. The Court draws such help as it can from the testimony of the psychiatrists in the light of the whole case . . . In weighing the evidence of psychiatrists it must be kept in mind that behavioural psychiatry is still an uncertain field influenced at times by theories which are not necessarily demonstrated when put into practice in the realities of life. We are dealing with the likelihood of evil, as perceived by the community, being caused to any person.

The purpose of the psychiatric examinations of the offender contemplated by Part XXI is to assist the psychiatrists in forming an opinion as to the likely future conduct of the offender in sexual matters.<sup>144</sup> At the hearing, the psychiatrists proffer their opinions in this regard as expert witnesses.<sup>145</sup> It is not proper to ask a psychiatrist whether the offender is a dangerous sexual offender, nor is it proper, where the facts are in dispute, to ask the psychiatrist to express an opinion on disputed facts.<sup>146</sup> Where the facts are not in dispute, however, different considerations apply. The Manitoba Court of Appeal has held:<sup>147</sup>

[O]n the basis of undisputed facts or on an *ex hypothesi* basis, the psychiatrist may properly be asked his opinion on the likelihood of the accused causing injury, pain or other evil through failure in the future to control his sexual impulses, and upon the likelihood of his committing a further sexual offence. These are the areas in which a psychiatrist's expert opinion is most valuable . . . The final decision in all matters must rest with the Judge but he is entitled to the opinions of the psychiatrists, which he may accept or reject in whole or in part.<sup>148</sup>

In addition to psychiatric testimony, the court conducting a dangerous offender hearing is required to hear all other relevant evidence. Although the results of "phallometric tests" (which measure male sexual arousal by gauging



changes in the subject's penile circumference in response to different auditory and visual stimuli) have been adduced at dangerous sexual offender hearings, no Canadian court has yet accorded them evidentiary weight.<sup>149</sup> The Supreme Court of Ontario has held, on the basis of expert testimony, that the phallometric test is neither scientifically reliable nor scientifically acceptable as yet, and therefore, does not meet the standards of judicial use.<sup>150</sup>

In a dangerous sexual offender proceeding, the offender's prospects of treatment or cure are not relevant to the determination whether he or she is a "dangerous offender" within the legal meaning of that term.<sup>151</sup> These considerations are, however, relevant to the exercise of the judge's discretion whether or not to impose a sentence of indefinite detention. The court is entitled to take into account any psychiatric or other evidence which indicates that the offender's cure is probable with a determinate period, in assessing the appropriateness of a sentence of indeterminate imprisonment.<sup>152</sup>

## References

### Chapter 37: Sentencing

- <sup>1</sup> See Culliton, "Sentencing Guidelines: A Judicial Viewpoint" in Grosman (ed.), *New Directions in Sentencing* (Toronto: Butterworths, 1980) at 295; and Hall, "Sentencing the Individual", *ibid.*, at 302.
- <sup>2</sup> See, e.g., *R. v. Morrisette* (1970), 1 C.C.C. (2d) 307 (Sask. C.A.).
- <sup>3</sup> *R. v. Willaert* (1953), 105 C.C.C. 172 at 176 (Ont. C.A.).
- <sup>4</sup> *R. v. Jackson* (1977), 21 N.S.R. (2d) 17 at 20 (C.A.).
- <sup>5</sup> Ruby, *Sentencing* (2d ed. Toronto: Butterworths, 1980) at 1.
- <sup>6</sup> Decore, *Criminal Sentencing: The Role of the Canadian Courts of Appeal and the Concept of Uniformity* (1963-64), 6 Cr. L.Q. 324 at 325.
- <sup>7</sup> See "Case Studies on the Sentencing of Sexual Offenders," *infra*.
- <sup>8</sup> Griffiths, Klein, and Verdun-Jones, *Criminal Justice in Canada* (Vancouver: Butterworths, 1980) at 184.
- <sup>9</sup> Nadin-Davis, *Canadian Sentencing Digest* (1981) at 25-26.
- <sup>10</sup> See Weiler, "The Reform of Punishment" in Law Reform Commission of Canada, *Studies on Sentencing* (Ottawa: Information Canada, 1974) at 93-205.
- <sup>11</sup> [1946] O.R. 808 at 815 (C.A.).
- <sup>12</sup> (1976), 19 Cr. L.Q. 276 (Ont. C.A.).
- <sup>13</sup> *Ibid.*
- <sup>14</sup> *R. v. Morrisette* (1970), 1 C.C.C. (2d) 207 (Sask. C.A.).
- <sup>15</sup> Law Reform Commission of Canada, *Fear of Punishment* (Ottawa: Supply and Services Canada, 1976) at 13.
- <sup>16</sup> *Ibid.*
- <sup>17</sup> Ruby, *supra*, note 5 at 9.
- <sup>18</sup> (1975), 26 C.C.C. (2d) 317 (Ont. C.A.).
- <sup>19</sup> *R. v. Walsh* (1979), 10 C.R. (3d) S-30 (Que. S.C.) and *cf. Amero v. The Queen* (1978), 3 C.R. (3d) S-45 (N.S.C.A.).
- <sup>20</sup> *R. v. G.B.* (1981), 47 N.S.R. (2d) 541 (Fam. Ct.).
- <sup>21</sup> *R. v. Trask* (1974), 28 C.R.N.S. 321 (Ont. C.A.).
- <sup>22</sup> *Strickland v. The Queen* (1981), 22 C.R. (3d) 287 (Alta. C.A.).
- <sup>23</sup> *R. v. M* (1979), 30 N.S.R. (2d) 638 (C.A.).
- <sup>24</sup> (1979), 46 C.C.C. (2d) 573 (Ont. C.A.).
- <sup>25</sup> *Ibid.*, at 576 *per* Brooke J.A. For a similar sentencing approach to pedophilic offenders, see *R. v. Doran* (1971), 16 C.R.N.S. 9 (Ont. C.A.).
- <sup>26</sup> *R. v. Iwaniw* (1959), 127 C.C.C. 40 at 50-51 (Man. C.A.).
- <sup>27</sup> Nadin-Davis, *supra*, note 9 at 54.
- <sup>28</sup> *Lees v. The Queen* (1979), 46 C.C.C. (2d) 385 (S.C.C.).
- <sup>29</sup> Nadin-Davis, *supra*, note 9 at 57.
- <sup>30</sup> (1974), 15 C.C.C. (2d) 376 at 377 (Ont. C.A.).
- <sup>31</sup> See, e.g., *R. v. Niman* (1974), 31 C.R.N.S. 51 (Ont. Prov. Ct.).

- <sup>32</sup> See, e.g., *R. v. Pilgrim* (1981), 64 C.C.C. (2d) 523 (Nfld. C.A.) (indecent assault on a male); *R. v. D* (1981), 63 C.C.C. (2d) 351 (Que. C.A.) (incest); *R. v. McBride*, unreported, Oct. 14, 1981 (Ont. C.A.) (indecent assault on a female); and *R. v. Descalchuk* (1980), 22 C.R. (3d) 89 (B.C.C.A.) (rape).
- <sup>33</sup> Ruby, *supra*, note 5 at 88.
- <sup>34</sup> See generally Salhany, *Canadian Criminal Procedure* (2d ed. Toronto: Canada Law Book, 1978) at 228; Martin, "Mental Disorder and Criminal Responsibility in Canadian Law," in Hucker, Webster, and Ben-Aron, eds., *Mental Disorder and Criminal Responsibility* (Toronto: Butterworths, 1981) at 15; Tanay, "In Defence of the Insanity Defence," *ibid.*, at 121.
- <sup>35</sup> (1981), 23 C.R. (3d) 56 (Ont. C.A.).
- <sup>36</sup> Ruby, *supra*, note 5 at 111.
- <sup>37</sup> (1974), 10 N.S.R. (2d) 94 (C.A.).
- <sup>38</sup> (1971), 5 C.C.C. (2d) 366 (Ont. C.A.).
- <sup>39</sup> *R. v. Hall* (1981), 63 C.C.C. (2d) 535 (Alta. C.A.).
- <sup>40</sup> (1979), 35 N.S.R. (2d) 35 (C.A.).
- <sup>41</sup> *R. v. De Haan* (1967), 52 Cr. App. R. 25 (C.C.A.); *R. v. Johnston and Tremayne*, [1970] 4 C.C.C. 64 (Ont. C.A.).
- <sup>42</sup> Salhany, *supra*, note 34 at 268.
- <sup>43</sup> *Ibid.* See *R. v. Spiller*, [1969] 4 C.C.C. 211 (B.C.C.A.).
- <sup>44</sup> (1978), 26 N.S.R. (2d) 460 (C.A.).
- <sup>45</sup> *Ibid.*, at 461.
- <sup>46</sup> (1978), 21 Cr. L.Q. 25 (Alta. T.D.).
- <sup>47</sup> *R. v. D* (1981), 23 C.R. (3d) 56 (Ont. C.A.).
- <sup>48</sup> See *R. v. Simmons* (1973), 13 C.C.C. (2d) 65 (Ont. C.A.); *R. v. St. Onge* (1977), 17 N.B.R. (2d) 99 (C.A.); and *Strickland v. The Queen* (1981), 22 C.R. (3d) 287 (Alta. C.A.).
- <sup>49</sup> (1970), 1 C.C.C. (2d) 307 (Sask. C.A.).
- <sup>50</sup> *R. v. Lévesque* (1980), 19 C.R. (3d) 43 (Que. S.C.).
- <sup>51</sup> *R. v. I* (1976), 1 A.R. 27 (C.A.).
- <sup>52</sup> *R. v. Wood* (1975), 26 C.C.C. (2d) 100 (Alta. C.A.).
- <sup>53</sup> *R. v. Tomkulak* (B.C.C.A., Vancouver, N. 800960, June 16, 1981).
- <sup>54</sup> *X. v. The Queen*, [1970] C.A. 1093.
- <sup>55</sup> *R. v. D* (1981), 23 C.R. (3d) 56 (Ont. C.A.).
- <sup>56</sup> Nadin-Davis, *supra*, note 9 at 105.
- <sup>57</sup> *Ibid.*
- <sup>58</sup> Parker, *The Law of Probation*, 19 Can. J. Crim. Corr. 51 at 115
- <sup>59</sup> *R. v. Morelli* (1977), 37 C.C.C. (2d) 392 (Ont. Prov. Ct.).
- <sup>60</sup> (1975), 1 C.R. (3d) S-26 at S-31 (N.S.C.A.).
- <sup>61</sup> (1978), 1 C.R. (3d) S-36 (N.S.C.A.).
- <sup>62</sup> *Ibid.*, at 40.
- <sup>63</sup> Ruby, *supra*, note 5 at 231-242.
- <sup>64</sup> *Ibid.*, at 237.
- <sup>65</sup> *R. v. Berger*, [1971] 1 O.R. 765 (C.A.).
- <sup>66</sup> *Report of the Canadian Committee on Corrections* (Ottawa: Queen's Printer, Canada, 1969) at 194.
- <sup>67</sup> *R. v. Sanchez-Pino* (1973), 11 C.C.C. (2d) 53 (Ont. C.A.).
- <sup>68</sup> *R. v. Niman* (1974), 31 C.R.N.S. 51 (Ont. Prov. Ct.).
- <sup>69</sup> *R. v. Balazsy* (1980), 54 C.C.C. (2d) 346 (Ont. Prov. Ct.).
- <sup>70</sup> (1977), 36 C.C.C. (2d) 321 (Ont. Prov. Ct.).
- <sup>71</sup> (1980), 5 Man. R. (2d) 165 (C.A.).
- <sup>72</sup> (1973), 13 C.C.C. (2d) 450 (B.C.C.A.).



- <sup>73</sup> A record of the discharge is maintained pursuant to the provisions of the *Criminal Records Act*. An offender may remove such record by applying in accordance with the terms of the Act.
- <sup>74</sup> Salhany, *supra*, note 34 at 283.
- <sup>75</sup> (1981), 23 C.R. (3d) 71 (Que. C.A.).
- <sup>76</sup> Mewett, *The Suspended Sentence and Preventive Detention* (1958-59), 1 Cr. L.Q. 268 at 271.
- <sup>77</sup> *Cr. Code*, ss. 663(3) and 664(2)(b).
- <sup>78</sup> *R. v. Smith* (1972), 7 C.C.C. (2d) 468 (N.W.T.T.C.); *R. v. Blacquiére* (1975), 24 C.C.C. (2d) 168 (Ont. C.A.); *R. v. St. James* (1981), 20 C.R. (3d) 389 (Que. C.A.).
- <sup>79</sup> Mewett, *supra*, note 76 at 272.
- <sup>80</sup> See, e.g., *R. v. Shanower* (1972), 8 C.C.C. (2d) 527 (Ont. C.A.) (rape).
- <sup>81</sup> (1977), 17 N.B.R. (2d) 99 (C.A.).
- <sup>82</sup> See *R. v. Bélanger* (1979), 46 C.C.C. (2d) 266 at 268.
- <sup>83</sup> *R. v. DeCoste* (1974), 10 N.S.R. (2d) 94 (C.A.).
- <sup>84</sup> *R. v. Pharo* (1970), 12 C.R.N.S. 151 (Ont. Co. Ct.).
- <sup>85</sup> See Schiffer, *The Sentencing of Mentally Disordered Offenders* (1976), 14 Osgoode Hall L.J. 307.
- <sup>86</sup> *Ibid.*, at 321-22.
- <sup>87</sup> *Supra*, note 25.
- <sup>88</sup> *Ibid.*
- <sup>89</sup> Schiffer, *supra*, note 85 at 322.
- <sup>90</sup> *Cr. Code*, s. 659(1).
- <sup>91</sup> Griffiths, Klein, and Verdun-Jones, *supra*, note 8 at 208.
- <sup>92</sup> See *Report of the Canadian Committee on Corrections*, *supra*, note 66 at 289-92.
- <sup>93</sup> Griffiths, Klein, and Verdun-Jones, *supra*, note 8 at 210-11.
- <sup>94</sup> Ruby, *supra*, note 5 at 116.
- <sup>95</sup> [1973] 1 W.W.R. 744 (Alta. S.C.).
- <sup>96</sup> *Ibid.*, at 756.
- <sup>97</sup> Schiffer, *supra*, note 85 at 331.
- <sup>98</sup> Canada. Law Reform Commission of Canada, *The Criminal Process and Mental Disorder* (Ottawa: Information Canada, 1975, p. 46).
- <sup>99</sup> *Penitentiary Act*, R.S.C. 1970, c. P-6, *as am.*
- <sup>100</sup> See generally Griffiths, Klein, and Jones, *supra*, note 8 at 261 *et. seq.*
- <sup>101</sup> *Penitentiary Act*, R.S.C. 1970, c. P-6, *as am.*
- <sup>102</sup> *Penitentiary Act*; R.S.C. 1970, c. P-6, *as am.*, s. 24.1(1).
- <sup>103</sup> *R. v. Moore* (1983), 33 C.R. (3d) 99 (Ont. C.A.), *aff'd* (1983), 33 C.R. (3d) 97 (S.C.C.). See also *Truscott v. Director of Mountain Institution and National Parole Board* (1983), 33 C.R. (3d) 121 (B.C.C.A.).
- <sup>104</sup> *Parole Act*, R.S.C. 1970, c. P-2, ss. 10, 12, 15, and 16.
- <sup>105</sup> *R. v. Moore*, *supra*, note 103; *Truscott v. Director of Mountain Institution and National Parole Board*, *supra*, note 103.
- <sup>106</sup> See generally *Parole Regulations*, S.O.R. 178-428, 78-524, 78-628, 79-88, 81-318, and 81-487.
- <sup>107</sup> Law Reform Commission of Canada, *The Parole Process* (Ottawa: Supply and Services Canada, 1976) at 4.
- <sup>108</sup> Griffiths, Klein, and Verdun-Jones, *supra*, note 8 at 262.
- <sup>109</sup> *Cr. Code*, s. 695.1(1). Section 695.1(2) governs the parole status of offenders in custody under a sentence of preventive detention imposed before the pertinent 1977 amendments came into force.
- <sup>110</sup> Griffiths, Klein, and Verdun-Jones, *supra*, note 8 at 262-63.
- <sup>111</sup> *Parole Act*, R.S.C. 1970, c. P-2, s. 6.

- <sup>112</sup> *Report of the Canadian Committee on Corrections*, *supra*, note 66 at 350.
- <sup>113</sup> Griffiths, Klein, and Verdun-Jones, *supra*, note 8 at 278, and see generally *Report of the Task Force on Community-Based Residential Centres* (Ottawa: Information Canada, 1973).
- <sup>114</sup> *Ibid.*, at 10.
- <sup>115</sup> Ministry of the Solicitor General of Canada, *Directory of Community Based Residential Centres in Canada* (Ottawa: Ministry Secretariat, 1975).
- <sup>116</sup> See *Report of the Canadian Committee on Corrections*, *supra*, note 66 at 243 ff.
- <sup>117</sup> For the history of the various "habitual offender" and "dangerous offender" legislation in Canada, see *Report of the Canadian Committee on Corrections*, *ibid.*, at 241 ff.; Salhany, *supra*, note 42 at 292-300; Griffiths, Klein, and Verdun-Jones, *supra*, note 8 at 317-25; and Mewett, *Habitual Criminal Legislation Under the Criminal Code* (1961), 39 Can. Bar Rev. 42.
- <sup>118</sup> *Cr. Code*, s. 688.
- <sup>119</sup> *R. v. Butler* (1978), 41 C.C.C. (2d) 410 (Alta. S.C.); *R. v. Jackson* (1981), 61 C.C.C. (2d) 540 (N.S.C.A.).
- <sup>120</sup> *Cr. Code*, s. 688.
- <sup>121</sup> But see text accompanying notes 136 and 137, *infra*.
- <sup>122</sup> *R. v. Hall* (1981), 63 C.C.C. (2d) 535 (Alta. C.A.), leave to appeal to S.C.C. refused March 5, 1982; *R. v. Milne* (1982), 7 W.C.B. 443 (B.C.C.A.); *R. v. Crosby* (1982), 1 C.C.C. (3d) 233 (Ont. C.A.).
- <sup>123</sup> *R. v. Martin* (1982), 65 C.C.C. (2d) 376 (Que. C.A.).
- <sup>124</sup> *Cr. Code*, s. 690(3).
- <sup>125</sup> *Cr. Code*, s. 690(1).
- <sup>126</sup> *Cr. Code*, s. 692.
- <sup>127</sup> *Cr. Code*, s. 691.
- <sup>128</sup> *Klipper v. The Queen*, [1968] 2 C.C.C. 129 (S.C.C.). For other judicial statements concerning the purposes of preventive detention provisions, see *Hatchwell v. The Queen* (1975), 21 C.C.C. (2d) 301 (S.C.C.) and *R. v. MacInnis* (1981), 64 C.C.C. (2d) 553 (N.S.C.A.).
- <sup>129</sup> (1978), 41 C.C.C. (2d) 410 (Alta. S.C.).
- <sup>130</sup> See *R. v. Kelman* (1971), 4 C.C.C. (2d) 8 at 10 (B.C.S.C.).
- <sup>131</sup> *Ibid.*
- <sup>132</sup> [1970] 1 C.C.C. 175 (Man. C.A.).
- <sup>133</sup> See generally Ericson, *Penal Psychiatry in Canada: The Method of our Madness* (1976), 26 U.T.L.J. 17; Greenland, *Dangerous Sex Offenders in Canada* (1972), 14 Can. J. Crim. Corr. 44; Klein, *The Dangerousness of Dangerous Offender Legislation: Forensic Folklore Revisited* (1976), 18 Can. J. Crim. Corr. 109; Klein, *Habitual Offender Legislation and the Bargaining Process* (1973), 15 Cr. L. Q. 417; and Law Reform Commission of Canada, *Imprisonment and Release* (Working Paper 11) (Ottawa: Information Canada, 1975) at 27-31.
- <sup>134</sup> (1977), 34 C.C.C. (2d) 293 (Alta. C.A.).
- <sup>135</sup> *Ibid.*, at 300.
- <sup>136</sup> *R. v. Roestad* (1971), 5 C.C.C. (2d) 564 (Ont. Co. Ct.).
- <sup>137</sup> *R. v. Milne* (1982), 7 W.C.B. 443 (B.C.C.A.).
- <sup>138</sup> *Cr. Code*, s. 688(b).
- <sup>139</sup> *R. v. Knight* (1975), 27 C.C.C. (2d) 343 (Ont. H.C.).
- <sup>140</sup> *Carleton v. The Queen* (1981), 23 C.R. (3d) 129 (Alta. C.A.), leave to appeal to S.C.C. granted April 6, 1982.
- <sup>141</sup> *Supra*, note 129.
- <sup>142</sup> *Ibid.*, at 411.
- <sup>143</sup> *R. v. Dwyer*, *supra*, note 134 at 303 *per* Clement J.A.
- <sup>144</sup> *R. v. Loysen* (1973), 13 C.C.C. (2d) 202 (B.C.S.C.).
- <sup>145</sup> *R. v. McAmmond*, *supra*, note 132.
- <sup>146</sup> *Ibid.*

<sup>147</sup> *Ibid.*, at 182.

<sup>148</sup> See also *R. v. Kelman*, *supra*, note 130.

<sup>149</sup> Kastner, "Dangerous Offenders", an unpublished paper prepared in 1982 for Ontario Crown Attorneys, at 49.

<sup>150</sup> *R. v. Carbone*, unreported, April 19, 1982 (Ont. S.C.).

<sup>151</sup> *Carleton v. The Queen*, *supra*, note 140.

<sup>152</sup> *Ibid.* See also *R. v. Hall*, *supra*, note 122.



## Chapter 38

# Convicted Offenders

The denominator used in the presentation of findings from the National Corrections Survey is 695 convicted male child sexual offenders. In addition to this group, eight convicted offenders were women; the circumstances of the offences committed by females are given separately as case studies. The 695 convicted male offenders are considered in relation to their victims, respectively: offenders having male victims (129), female victims (545) and two or more victims (21).

The review of the previous and current convictions of offenders in relation to the number and types of offences committed is given in Chapter 40, *Recidivism*. To consolidate the presentation of information given in relation to providing a description of the offenders and the review of recidivism (e.g., ages of victims and offenders), selected findings concerning the prior criminal record of offenders are given in this chapter.

## Sex of Victims

Of male offenders having a single victim, 545 of the victims were females and 129 were males. For the small group of 21 male offenders having two or more victims, children of both sexes had been involved and, in some instances, the sex of the second child or additional victim was not specified.

In comparison with the findings of the National Population Survey, proportionately more victims of convicted offenders were females and fewer were males. In relation to the gender ratios of victims known to the public services documented in the other national surveys, the proportion of female victims of convicted offenders (78.4 per cent) was closer to that of the National Police Force Survey (77.7 per cent) than to those of the surveys of hospitals (86.3 per cent) and child protection services (85.6 per cent). In each of the four national surveys, proportionately fewer male victims were known to public services than the proportion documented in the National Population Survey.

The findings concerning the gender ratio of victims of convicted offenders suggest that once sexual offences come to the attention of the police, the sex of the victim appears to have little bearing in relation to whether offenders were subsequently convicted.

**Table 38.1**

**Prior Criminal Records of  
Convicted Male Child Sexual Offenders:  
by Types of Victims of Offences Involving Current Convictions**

Victims of Current Convictions	Prior Criminal Records of Offenders							
	None		Sexual Offences		Other Offences		Total	
	No.	%	No.	%	No.	%	No.	%
Male	49	38.0	51	39.5	29	22.5	129	100.0
Female	206	37.8	117	21.5	222	40.7	545	100.0
Multiple	7	33.3	11	52.4	3	14.3	21	100.0
<b>TOTAL</b>	<b>262</b>	<b>37.7</b>	<b>179</b>	<b>25.8</b>	<b>254</b>	<b>36.5</b>	<b>695</b>	<b>100.0</b>

*National Corrections Survey.* The information in this table provides the denominators for the presentation of findings concerning recidivism.

Sexual recidivism is assessed here in relation to the proportion of convicted male child sexual offenders having one or more previous convictions for sexual offences when they were adults. Excluded from this definition are: sexual offences which were committed, but never reported; offences committed when offenders were juveniles; and sexually motivated crimes resulting in charges or convictions which were otherwise classified. The classification used separates the convicted male child sexual offenders into: those having no prior convictions as adults; those previously convicted only for non-sexual offences; and those having previous convictions for sexual offences, some of whom had also been convicted earlier of non-sexual offences.

**Despite the absence of national information on the level of recidivism of all types of convicted offenders in custody or under supervision of federal, provincial and territorial correctional services, the findings of the National Corrections Survey indicate that sexual recidivism involving one in four convicted child sexual offenders (25.8 per cent) is neither a rare nor isolated phenomenon.**

While the *general* level of recidivism (all types of previous convictions as an adult) varied little in relation offences having different types of victims for which offenders were currently sentenced, sharp differences occur when *sexual* recidivism is considered separately from previous convictions for non-sexual offences. The levels of sexual recidivism for the three categories of convicted male child sexual offenders were: 21.5 per cent, heterosexual offenders; 39.5

per cent, homosexual offenders; and 52.4 per cent, offenders having multiple victims. While overall, two in three offenders (62.3 per cent) had a prior criminal record as an adult, only one in seven offenders subsequently having multiple victims (14.3 per cent) and about one in five (22.5 per cent) later convicted of a homosexual offence had previously been sentenced for a non-sexual offence. In contrast, two in five offenders (40.7 per cent) later convicted of a heterosexual offence had previously been sentenced for a non-sexual offence.

## Age Distribution

Paralleling the findings of the other national surveys, proportionately more victims of convicted male offenders were young males and fewer were young females. Less than a half of the male victims (45.0 per cent) were age 11 or younger while only about a third (35.9 per cent) of female victims were in this age category. About one in six victims (16.4 per cent) was 16 years-old or older; proportionately, twice as many females as males were older adolescents. Of the 21 convicted offenders having two or more victims, when the age of the youngest victim is considered, six in seven (85.7 per cent) were young children age 11 or younger.

Ages of Victims	Male Victims		Female Victims		Multiple Victims	
	No.	%	No.	%	No.	%
Under age 7	14	10.9	71	13.0	6	28.6
7-11 years	44	34.1	125	22.9	12	57.1
12-13 years	25	19.4	91	16.7	—	—
14-15 years	21	16.3	66	12.1	1	4.8
16 years and older	12	9.3	102	18.7	—	—
Not reported	13	10.0	90	16.5	2	9.5
TOTAL	129	100.0	545	99.9*	21	100.0

\* rounding error

**In contrast to the findings on the age distribution of victims documented in the other national surveys, the victims of convicted offenders were proportionately older with fewer being young children age 11 or younger.** This finding indicates that in a proportion of cases known to the authorities, the young age of the child appears to be an appreciable factor in determining the outcome of charges laid against child sexual offenders.

In relation to the prior criminal record of convicted offenders, the findings indicate that with the exception of the female victims of sexual recidivists, the male victims of homosexual offenders were typically younger than the female victims of first-time offenders and non-sexual recidivists. Regardless of the nature of the offender's previous criminal record, the victims of offenders committing sexual offences against two or more children consistently constituted the youngest group which was sexually assaulted.



Criminal Record of Offenders	Average Age of Victims of Current Convictions of Offenders			
	Male Victims	Female Victims	Multiple Victims	Total
None	10.7	10.9	8.1	10.8
Sexual offences	11.6	11.4	6.8	11.2
Other offences	11.6	12.1	8.0	12.1
TOTAL	11.2	11.5	7.5	11.3

The victims of offenders convicted for the first time were the youngest (10.8 years); they were followed by the victims of sexual recidivists (11.2 years) and the victims of non-sexual recidivists (12.1 years). In relation to the risk of the very young child being a victim of a sexual offence, sexual recidivists were no more dangerous than the other two categories of convicted male child sexual offenders. The most dangerous offender in this regard was typically the male who had been convicted for the first time.

## Time of Occurrence

The reported seasonal distribution concerning when the offences committed by convicted offenders occurred parallels the findings in this regard of the National Police Force Survey. While overall there was a relatively uniform seasonal distribution, proportionately more offences had been committed during the summer and somewhat fewer during the winter. The seasonal distribution was: winter (21.4 per cent); spring (25.4 per cent); summer (30.2 per cent); and autumn (23.0 per cent).

## Where the Offences Occurred

Using the same classification of private and public places as that adopted in the other national surveys, it was found that slightly less than half of the offences (46.8 per cent) committed by convicted male offenders had been committed in private places, about a third had occurred in public places (33.4 per cent), and the location of the remainder was not ascertained from the available records (19.8 per cent).

Location Of Offences	Male Victims (n=129)	Female Victims (n=545)	Multiple Victims (n=21)
	Per Cent	Per Cent	Per Cent
Private places	43.0	47.8	57.1
Public places	30.2	34.3	28.6
Not reported	26.8	17.9	14.3

For cases for which this information was available, the ratios of offences committed in private and public places were generally comparable for male and female victims. However, of offences committed in private places, females were twice (30.0 per cent) as likely as males (14.1 per cent) to have had offences committed against them in their own homes, while the reverse was true of offences occurring in the offender's home. In the latter instance, male victims were twice (26.8 per cent) as likely to have been victimized in an offender's home as females (13.7 per cent). Of convicted offenders having two or more victims, proportionately more of these offences were committed in private places than offenders having a single victim.

The proportional distribution of private to public locations where the offences committed by convicted male offenders occurred is somewhat lower than that documented in the National Police Force Survey. However, this difference may be accounted for by the substantially higher proportion of cases for which the location of the offence was not identified in correctional records. The findings for the two surveys (police and corrections) were comparable in relation to the proportion of victims and offenders living in the same households and the proportion of offenders who were family members or relatives.

In about one in five offences (22.0 per cent), the victim and the convicted offender had been living in the same household when the offence was committed, with this situation having involved twice (24.6 per cent) as many female victims as male victims (12.1 per cent). These results parallel those of the National Police Force Survey in which slightly less than a fifth of the children and suspects were living in the same household or residence. When the experience of victims in all age groups is considered, there was an inverse relationship between their ages and the locations where the offences occurred. The likelihood of the youngest group of victims having been assaulted in their own homes was 33.0 per cent, while for the oldest group, this had happened to only about one in six (16.0 per cent).

In comparison with the findings of other surveys of convicted sexual offenders having both children and adults as victims, it appears, although exactly similar information is not available, that a higher proportion of convicted child sexual offenders commit their crimes in private locations. In 1974, a census was taken of 495 sexual offenders in custody in federal penitentiaries across Canada.<sup>1</sup> This group included offenders having both children and adults as victims; the study included only prisoners incarcerated or under supervision of the federal correctional service. Allowing for these differences between the 1974 Survey of the Canadian Penitentiary Service and the 1982 National Corrections Survey, it was found in the earlier review that about a third (34.9 per cent) of the sexual offences had been committed in private locations in contrast with under half (46.8 per cent) of the offences documented in the present survey.

## Types of Sexual Acts

In contrast to the types of sexual acts committed against victims whose experience was documented in other national surveys conducted by the Committee, proportionately more of the sexual acts committed by convicted offenders were of a more serious nature having involved completed or attempted vaginal and anal penetration. Proportionately twice as many sexual acts committed by convicted male child sexual offenders as those documented in the National Police Force Survey had involved vaginal penetration with a penis and anal penetration with a penis against male victims.

**Table 38.2**  
**Types of Sexual Acts Committed Against Children**  
**by Convicted Male Child Sexual Offenders**

Type of Sexual Act Committed Against The Child	Male Victims (n=129)		Female Victims (n=545)	
	No.	Non-Accum. %	No.	Non-Accum. %
Fondling/touching breasts, buttocks	8	6.2	100	18.3
Fondling/touching genital area	46	35.7	120	22.0
Kissing mouth, other parts	7	5.4	42	7.7
Oral-genital	28	21.7	51	9.4
Oral-anal	1	0.8	1	0.2
Attempted vaginal penetration with penis	—	—	54	9.9
Vaginal penetration with penis	—	—	192	35.2
Vaginal penetration with finger	—	—	32	5.9
Vaginal penetration with object	—	—	4	0.7
Attempted anal penetration with penis	6	4.7	7	1.3
Anal penetration with penis	21	16.3	9	1.7
Anal penetration with finger	3	2.3	1	0.2
Anal penetration with object	4	3.1	2	0.4
Bestiality	1	0.8	4	0.7
Exposed genitalia	13	10.0	51	9.4
Exposed nude body	6	4.7	19	3.5

*National Corrections Survey.* The sexual acts committed by convicted male child sexual offenders having more than one victim are given in the text.

Some form of vaginal penetration had been attempted or completed against half of the female victims (51.7 per cent). Offenders had had sexual intercourse with about one third of the girls (35.2 per cent) and about one in 28



females (3.6 per cent) had been a victim of completed or attempted anal penetration. In contrast, acts of completed or attempted anal penetration had been committed against one in four male victims (26.4 per cent). Male victims were also twice (21.7 per cent) as likely as girls (9.4 per cent) to have been involved in oral-genital contacts and they were more than half again as likely to have had their genitals sexually touched. On the other hand, one in five girls (18.3 per cent) had had her breasts or buttocks sexually fondled with acts of this kind having happened to only one in 16 male victims (6.2 per cent).

In five cases, one involving a boy and four involving girls, the victims had been forced by convicted male sexual offenders to commit acts of bestiality. One of the 21 convicted offenders having two or more victims had also forced children to engage in the act of bestiality. As well, in one of the eight cases involving a convicted female offender, an act of this kind had been committed. Despite the suggestion that "it is difficult to provide a rationale for maintaining the bestiality provision",<sup>2</sup> the findings indicate that in the instance of this survey, acts of this kind had involved about one in a hundred children of convicted sexual offenders.

Only one sexual act had been committed against three in four victims (73.9 per cent). In incidents involving more than one sexual act, proportionately, twice as many girls (26.4 per cent) as boys (14.7 per cent) had been victims.

The findings in Table 38.2 list the sexual acts committed in incidents in which only a single victim had been involved. In addition to this group, the sexual acts committed by the 21 convicted male offenders having two or more victims had involved: vaginal penetration with a penis (3); attempted vaginal penetration (2); anal penetration [penis (1), finger (1)]; oral-genital contact (5); acts of exposure (5); thigh intercourse (3); kissing mouth, other parts of the body (1); and bestiality (1). Proportionately, the convicted offenders having multiple victims in comparison to those having single victims appear to have committed fewer serious sexual acts, but as the findings concerning physical injuries to victims indicate, they were more likely to have hurt children.

The sexual acts of completed and attempted vaginal and anal penetration with a penis were considered in relation to whether convicted offenders had a prior criminal record. Of acts of this kind, those involving completed and attempted sexual intercourse with young female victims accounted for 85.1 per cent of the total; of the remainder involving completed or attempted acts of buggery, three in five (61.4 per cent) were against males, one in three (36.4 per cent) was against a female and one in 50 (2.2 per cent) was committed by offenders having multiple victims.

In the National Corrections Survey, about a third of the offenders (35.2 per cent) were sentenced for having had sexual intercourse with female victims and one in 10 (9.9 per cent) had attempted these acts. The findings indicate that there is a close association between whether offenders were recidivists and whether these types of acts had been committed against victims.

Sexual Acts Committed Against Female Victims	Previous Criminal Record		
	None	Sexual Offences	Other Offences
	Non-Accumulative Percentages		
Attempted vaginal penetration with penis	8.0	8.6	13.2
Vaginal penetration with penis	26.3	34.2	44.2
Attempted anal penetration with penis	0.4	3.8	1.1
Anal penetration with penis	1.2	2.9	1.6

About a third (34.3 per cent) of offenders having no prior record and about two in five sexual recidivists (42.8 per cent) had been sentenced for acts involving completed or attempted vaginal penetration with a penis. In contrast, close to three in five non-sexual recidivists (57.4 per cent) were convicted of sexual offences involving similar acts. These findings, which are congruent with those concerning the use of physical coercion and the extent of physical injuries sustained by victims, indicate that non-sexual recidivists, on average, committed more serious sexual offences and were more dangerous than were either first-time offenders or sexual recidivists. For sexual acts of this kind, the survey's findings suggest that having a prior criminal record is at least if not more significant than the fact of whether recidivism had involved previous convictions for sexual offences.

Sexual Acts Committed Against Male Victims	Previous Criminal Record		
	None	Offences	Other Offences
	Non-Accumulative Percentages		
Attempted anal penetration with penis	4.0	4.3	6.1
Anal penetration with penis	12.0	26.1	9.1

Fewer children had been victims of acts of buggery or attempted buggery. The findings from the National Corrections Survey concerning the distribution of these acts in relation to recidivism are less clearcut than those in this regard involving completed and attempted vaginal penetration with a penis. Fewer first-time offenders than either of two categories of recidivists had attempted acts of anal penetration with a penis. A substantially higher proportion in each category had been sentenced for completed acts of anal penetration with a penis with acts of this kind having been committed by over one in four sexual recidivists (26.1 per cent).

The findings of the National Corrections Survey clearly show that a **substantially larger proportion of female than male victims had more serious sexual offences committed against them by convicted male child sexual offenders.** In the case of male victims, a majority of the sexual acts consisted of touching



the sexual parts of the body, oral-genital contacts or acts of exposure. In contrast, well over half of the sexual acts against female victims involved attempted or completed penetration of the vagina or anus.

In some Canadian research studies on sexual offences, it has been concluded that serious sexual acts are seldom committed against children. In one such study that contributed numerous widely cited publications, it was noted in one report that:

“ . . . sexual acts with children are usually seen in terms of violence - the rape or murder of a child - although these are extremely rare occurrences. However rare, the very human tendency to fear the worst has created out of these sex-violence cases the archetype for all sexual contacts with children. In actuality, force and coercion hardly ever play a part in pedophilic acts.

. . . The great majority of sexual acts in heterosexual pedophilia consist of the same kind of sex-play as is found among prepubertal children, that is, looking, showing, touching, kissing, fondling . . . Penetration and intra-vaginal coitus is rare among sexual acts with children.”<sup>3</sup>

The findings of the National Corrections Survey in relation to the sexual offences committed by convicted male child sexual offenders do not support the observation that serious sexual acts against children are “extremely rare occurrences”. A substantial proportion of the offences documented was not only of a serious nature, but as findings given subsequently show, their commission frequently involved threats and the use of force, and a breach of responsibility by persons who were related or in positions of trust to the child.

## Use of Threats and Force

In this survey, a similar classification was used as that adopted in the other surveys concerning the types of threats and coercion involved in the commission of sexual offences. Threats included those situations in which a victim submitted because he or she was afraid of the offender. The category “victim was forced” included acts of physical coercion, direct assault and the brandishing or actual use of a weapon.

The use of intimidation and coercion against victims varied in relation to the types of offences for which offenders were currently convicted and whether they had a previous criminal record. While about a third (35.3 per cent) of first-time offenders had used some form of coercion against victims, the proportion resorting to threats and force rose to 45.9 per cent by sexual recidivists and to 50.4 per cent by non-sexual recidivists.

The use of threats and force also varied by the types of sexual acts committed. In this regard, some victims were at considerably greater risk than others in having been threatened or physically attacked before or during a sexual assault. On average, proportionately more female than male victims of convicted male child sexual offenders had been coerced. However, among the different categories of victims, the most vulnerable with respect to having been



threatened or physically assaulted were the female victims of heterosexual recidivists (59.1 per cent) and the male victims (60.6 per cent) of non-sexual recidivists.

**Table 38.3**  
**Use of Threats and Physical Force Against**  
**Victims of Offences Involving Current Convictions by**  
**Previous Criminal Record of Offenders**

Prior Criminal Record of Victims Offenders	Victims of Offences who had been Threatened or Physically Forced by Convicted Offenders			
	Male Victims (n=129)	Female Victims (n=545)	Multiple Victims (n=21)	Total (n=695)
	Non-Accumulative Percentages			
None	27.1	36.5	44.4	35.3
Sexual offences	21.7	59.1	12.5	45.9
Other offences	60.6	49.2	25.0	50.4
TOTAL	34.1	45.3	28.6	42.7

*National Corrections Survey*

In the National Police Force Survey, threats and force were reported to have been used against three in five victims. In the National Corrections Survey, proportionately fewer female victims had been threatened or forced. There was a sharp contrast in the findings of the two surveys in relation to the experience of male victims. In this instance, the proportions were almost exactly reversed. In the corrections survey, about two in three male victims were reported to have been neither threatened nor forced, while in the police force survey, about the same proportion had been threatened or forced. About a quarter of the offenders having multiple victims had used threats or force in committing sexual offences.

In offences in which some type of force had been used, the coercion typically had involved some form of physical restraint of, slapping, or punching the victim. In about one in 14 cases, weapons had been used (7.2 per cent), the child had been strangled or choked (6.2 per cent) or the offender had threatened to kill the child (7.0 per cent).

The Committee's findings on the use of threats and force against victims by convicted child sexual offenders parallel those of two studies conducted during the 1970s of sexual offenders incarcerated in federal penitentiaries, of whom between a half (50.9 per cent) and two-thirds (62.0 per cent) had used threats or force against victims.<sup>4-5</sup> The findings of the three surveys contrast sharply with the assumption prevalent in much of the research literature for this field that "few child molesters are physically dangerous"<sup>6</sup> or that "aggressive attacks on children [which] fortunately are extremely rare".<sup>7</sup>

The findings of the national surveys conducted by the Committee indicate that while only a small proportion of victims was reported to have been physically injured, considerably more had experienced emotional and behavioural harms, and in a substantial number of the offences committed, the child had been threatened or forced to submit to an older person. In submitting to these acts, there is no doubt that many children did so because they were afraid that further force would be used against them or that they would be physically injured.

The different findings obtained in the various studies about the use of force and the extent of the physical injuries sustained by victims may be partially accounted for by the imprecision of the definitions used, the sources of information relied upon and the aegis under which such research was conducted. In many reports reviewed by the Committee, it was found that, while broad generalizations had been reached about the infrequent use of coercion and the minimal harms incurred by young victims, precise documentation about these circumstances was usually notable by its absence.

The general research literature on sexual offenders, for instance, has typically found that relatively few homosexual offenders resort to violence against victims. Few of these studies, however, have assessed the findings obtained in relation to the circumstances of how other types of sexual offences were committed nor have they dealt specifically with homosexual offenders having children and youths as victims. On the basis of information obtained in the National Corrections Survey, the conclusions concerning the non-violent character of homosexual offenders are not confirmed. About one in four first-time offenders and sexual recidivists committing homosexual offences had threatened or physically assaulted victims and some form of coercion had been used against three in five victims of non-sexual recidivists in this group.

Much of the information on these issues in the research literature has come directly from reports provided by offenders themselves who had been charged, were awaiting sentencing, or had been convicted. The professional staff to whom this information was given often included persons under contract or in the employ of enforcement or correctional services. Such persons are in vital positions of authority in relation to decisions which are taken affecting the welfare of offenders. In a situation in which assessment, treatment and the prospect of punishment or discharge are inextricably bound together, it is not surprising, as a number of observers have noted, that some offenders may not be wholly forthright in recounting accurately the circumstances of the offences committed.<sup>8-10</sup> In this regard, a psychiatrist who had assessed dangerous sexual offenders who were in custody in British Columbia noted that:

“The free flow of communication which is expected to occur in therapy groups is invariably restricted to greater or lesser degree by the unwritten ‘contract’ and by the group’s dependency on the therapist. The patient is extremely aware of the boundaries for self-revelation . . . the patient will quickly perceive certain things are to be kept out of the communication and will reveal only what he wishes to reveal and what he senses the therapist wants to hear . . . the therapist, with his power of reporting and assessment,

has very real power over the inmate's future. The ever-present fear of damaging one's chances for parole naturally inhibits free communication . . . for their day-to-day survival in the institution and to obtain an early release, inmates become adept at numerous games."<sup>11</sup>

On the basis of a broadly undertaken review of the general and Canadian research literature concerning the assessment and treatment of child molesters, a psychologist concluded that:

"In summary, the psychological test data portray child molesters as unassertive, guarded, moralistic, and guilt-ridden. It is unclear as to what extent the expression of these traits are due to the child molesters' personalities and to what extent they are a result of the child molesters' attempts to convince institutional staff and supervisory personnel of their nondeviance."<sup>12</sup>

While the reasons why such sharp differences occur in the findings of various reports concerning the use of coercion by child sexual offenders may not be fully ascertainable, the Committee concludes on the basis of the findings of the national police and corrections surveys that the use of threats and force are integral elements in a substantial proportion of the sexual offences against children and youths known to the authorities.

## Physical Injuries

While the findings concerning the physical injuries sustained by victims of convicted offenders were generally comparable to those obtained in the other national surveys conducted by the Committee, sharp variations occurred in this regard in relation to the types of offences committed and whether offenders had prior convictions. Overall, about one in eight victims (12.4 per cent) had been physically injured. The proportions of victims injured by the types of offences committed were: victims of homosexual offenders, 7.8 per cent; victims of heterosexual offenders, 13.0 per cent; and offenders having two or more victims, 23.8 per cent. The survey's findings also indicate that there was an association between recidivism and the proportion of victims who had been physically injured. The distribution in this regard was: offenders having no previous convictions, 8.8 per cent; sexual recidivists, 10.7 per cent; and non-sexual recidivists, 18.4 per cent.

In comparison to other convicted offenders for whom information was obtained, fewer homosexual offenders having no prior convictions and homosexual recidivists were reported to have physically harmed victims. However, proportionately more victims of homosexual offences had been physically injured by non-sexual recidivists. Although comparable trends occurred in the distribution of victims injured by heterosexual offenders in relation to their prior criminal record, in each instance, proportionately more female victims had been hurt. Proportionately more of the group of offenders having multiple victims had physically injured victims than had other offenders.



**Table 38.4**

**Victims who were Physically Injured by  
Currently Convicted Offenders in Relation to  
Previous Criminal Record of Offenders**

Prior Criminal Record of Offender	Victims who were Physically Injured by Currently Convicted Offenders in Relation to Previous Criminal Record of Offenders			
	Male Victims (n=129)	Female Victims (n=545)	Multiple Victims (n=21)	Total (n=695)
	Non-Accumulative Percentages			
None	6.0	9.2	11.1	8.8
Sexual offences	4.3	11.4	37.5	10.7
Other offences	15.2	18.8	25.0	18.4
<b>TOTAL</b>	<b>7.8</b>	<b>13.0</b>	<b>23.8</b>	<b>12.4</b>

*National Corrections Survey*

The findings concerning the hospitalization of victims parallel those for the distribution of victims who were physically injured. On average, 3.9 per cent of victims had been hospitalized. The proportions in relation to recidivism were: offenders having no previous convictions, 1.0 per cent; sexual recidivists, 3.1 per cent; and non-sexual recidivists, 8.3 per cent.

The findings concerning the distribution of physical injuries sustained by victims are consistent with those concerning other aspects of the circumstances of the sexual offences committed against children and youths. Proportionately more recidivists having previously committed sexual and non-sexual offences than first-time offenders had committed more serious sexual acts, had resorted more frequently to coercing victims and had physically injured more victims. While in the review of previous and current convictions of sexual recidivists given in Chapter 40, *Recidivism*, it is noted that there are serious limitations in reaching valid conclusions exclusively from these sources of information, the related findings concerning the sexual acts committed, the use of coercion and the injuries sustained by victims appear to confirm that in the sequence of offences committed by sexual recidivists there is a progression from minor to more serious acts having been committed.

The survey's findings indicate that having a prior criminal record of convictions for sexual offences is not by itself a sufficient measure of determining which types of sexual offenders may be more dangerous than others to victims. On average, non-sexual recidivists had committed more serious acts and used more violence than had sexual recidivists. The findings suggest that having a prior criminal record of any kind is a more accurate measure of the likelihood of violent sexual acts being committed than whether offenders had only previously committed sexual offences.

## Sex of Convicted Offenders

Most of the Canadian research on convicted sexual offenders has dealt exclusively with males who have been charged or sentenced. In the National Corrections Survey, eight offenders (1.1 per cent) were women. This gender ratio is about two-fifths lower than that documented in the National Police Force Survey (1.8 per cent, females); it is well less than half of that reported in the National Population Survey (2.8 per cent). The findings suggest that the sex of the assailant may be a selective factor that intervenes between the occurrence of offences and the conviction of offenders.

Of convicted male offenders having single victims, four in five (80.1 per cent) had committed heterosexual offences and one in five (19.9 per cent) had committed a homosexual offence. This distribution is virtually identical to that found in the four national surveys conducted by the Committee in which 80.9 per cent of the offences were heterosexual and 19.1 per cent were homosexual. The gender of the victims of the eight convicted female offenders was: four males, three females, and one case in which victims of both sexes were assaulted.

Because the circumstances of the sexual offences committed by convicted females differ from those of male offenders, these incidents are reported as case studies.

### *Case Study 1*

As a child, this 39 year-old offender was brought up by an aunt and uncle who were reported to have been heavy drinkers. The children in the family included her three natural siblings, a step-brother, a step-sister and an adopted brother. Upon completing Grade 10, she left home, married twice, and when she started committing the offences for which she was later arrested, she was living with her 12 year-old son and was sexually active with a male partner. She held a part-time job.

The sexual offences for which she and her partner were arrested and convicted occurred over a period of about three years. The acts started when her partner invited her and some female friends to engage in a menage-a-trois. On one occasion, the offender brought along her 12 year-old son and a female friend of the same age. Her partner expressed his sexual interest and invited them to return. Soon, the offender had befriended another young girl (eight years-old), and involved her in the relationship. Their sexual acts included: lesbian acts with the girls, including oral sex; intercourse with her son; and attempted intercourse by her partner with one of the female victims. The children's co-operation was obtained by giving them alcohol, drugs and money. The children were shown pornographic films and played with pornographic playing cards during the episodes. Photographs of the nude children were taken by the offender.

Following her arrest and that of her male partner, the offender was convicted on two counts of gross indecency and of having committed incest. She was sentenced to five years' imprisonment, and following admission, she was placed in protective custody. Her medical assessment indicated that she was

addicted to alcohol and heroin. When the case was reviewed, she had not received medical or psychiatric treatment.

### *Case Study 2*

In addition to having completed high school, the offender, a 34 year-old woman, had received two years of training at a business school. She was the middle child in a family of three children, and until she was 16, she lived with her parents and siblings. Following her parents' divorce, and after she had become pregnant, she married a boy of approximately her own age. She had two children with whom she has had no subsequent contact (they were given up for adoption). The offender had one previous offence — theft over \$200. She was living with her second husband and her 17 month-old adopted daughter when the offence for which she was currently convicted occurred.

Following an intense argument with her husband, the woman ran upstairs to her child's bedroom and shut the door. When her husband heard the child crying, he entered the room and discovered the offender dripping with blood from her mouth and hands while the child lay bleeding in the genital area. The father immediately took the child to hospital where evidence was found of a bite, bruising and breakage of the skin. It was also discovered that the victim had suffered previous abuse to the genital area.

Charges were laid five days following the incident; the offender was convicted of indecent assault on a female and assault causing bodily harm. She was sentenced to a three month custodial sentence and one year on probation with reporting conditions. Both a pre-sentence report and a psychiatric assessment were ordered. The psychiatric assessment found the offender to be psychotic, schizoid, suicidal, hostile and having signs of inadequate social skills. She was diagnosed as manic depressive. Treatment was recommended, and on sentencing, this was made a condition of probation.

The offender was committed to — , where she served her sentence at her own request. While incarcerated, she was placed in protective custody. Following her release, she received some treatment from the medical staff of the correctional facility, assistance which was also complemented by an external facility specializing in the treatment of deviant sexual behaviour. This treatment included group counselling, individual counselling and drug therapy.

When she was released on probation, the conditions set were that she obtain psychiatric treatment and refrain from seeing the victim without another adult being present. She received individual counselling on a regular basis until she left the province against the advice of her physician. She returned to live with her husband and remained unemployed. The offender was denied custody of the victim who was made a ward of the Crown.

### *Case Study 3*

This 18 year-old woman grew up in an unsettled home in which she is reported to have received little affection from her parents. Her father, an alcoholic, was chronically unemployed and the family was supported by means of provincial welfare. The homes where this woman lived as a child with her 11 siblings were condemned several times by local Departments of Public Health.



Due to parental neglect, the local child protection agency assumed custody when she was age 13 and she was placed in a foster home for a year. Her schooling ended with the completion of Grade 6. When the offence for which she was currently convicted occurred, she was living with her parents and four siblings. Her previous convictions included: damage to property, causing a disturbance, drinking under age and threatening a teacher with a knife.

The offence for which she was convicted of committing an act of gross indecency took place in a hotel room with a group of friends that included two male accomplices and the victim, a 14 year-old boy. The victim was physically restrained by the two accomplices who also threatened him with a broken beer bottle while the offender masturbated. The victim resisted, but suffered no physical injuries. Escaping from the hotel room, he told his grandmother who called the police.

Upon conviction, the offender was sentenced to two years' probation with reporting conditions. She was warned not to contact the victim or his family. While on probation, the offender lived with three of her siblings and one of her siblings' boyfriends. She frequently changed jobs, usually being employed as a waitress.

#### *Case Study 4*

This 36 year-old woman was convicted of contributing to juvenile delinquency. An only child, she was raised by a single, unemployed mother who received welfare assistance.

After leaving home, this woman had married twice, the first marriage ending in divorce, and the second involving the death of her husband three weeks after the wedding. Subsequently, she lived alone and supported herself by means of part-time employment as a skating instructor. It was in this capacity that she met a 14 year-old male student. They became lovers and had intercourse. The consensual relationship continued for six months with most of the sexual acts occurring in the woman's home. Their activities were discovered when the boy's parents became suspicious of his extended absences from home. Questioning their son, he told them what had happened.

The boy's parents laid charges against the offender who was arrested and subsequently convicted. The offender was sentenced to one year probation with reporting conditions. Probation conditions included reports to her probation officer and prohibition from association with the victim. The conviction was her first offence.

Following her conviction, the offender violated her probation conditions by contacting the victim and was warned by the court. While on probation, she remarried.

#### *Case Study 5*

This 31 year-old offender had completed Grade 10, married and had children, and when the offence for which she was convicted occurred, she was living with her common law husband.

The offender and her husband enticed young boys to their home, and following seduction and coercion, the victims committed acts of anal penetration with a penis on the offender. The offender was convicted of committing bug-

gery and acts of gross indecency involving two 12 year-old male victims. She was sentenced to 18 months' imprisonment.

#### *Case Study 6*

When she was a child, this 16 year-old girl was sexually assaulted by her father over a period of years, as were her two sisters. Her father was subsequently charged with incest and received an 18 month sentence and probation. The offender, still a teenager, was living with her mother, father and a 10 year-old brother when the offence was committed.

The offence occurred while the offender was babysitting a four year-old boy in his home. The sexual activity was reported to have been initiated by the victim asking to see the offender naked. The offender then proceeded to fondle and kiss the child and expose her nude body, while the victim, in return, sexually fondled the offender. They were discovered when the victim's seven year-old sister walked into the bedroom and found the victim lying on top of the offender.

The offender was charged with contributing to juvenile delinquency and was sentenced to two years on probation. The conditions of her probation were that she obtain psychiatric counselling, report to her probation officer every two weeks, remain in the jurisdiction, and refrain from being alone with a child under the age of 14 years. While on probation, she lived with her family and had a series of short-term jobs. A warrant was issued for her arrest when on one occasion she failed to report to her probation officer.

#### *Case Study 7*

This 31 year-old woman was convicted of four counts of contributing to juvenile delinquency on the basis of sexual offences against five females under the age of 16. When the offences occurred, she was living with her second husband and two children from her previous marriage. Her husband was reported to have had a long criminal record.

The offences committed by the woman and her husband involved approaching young girls on the street, usually in front of bars. The couple took their victims for drives in their car, spoke of sexual acts, and seduced them by giving them alcohol. The victims were reported not to have resisted; no physical injuries were sustained.

The offender was arrested and subsequently convicted. She was sentenced to two years' probation and a \$200 fine. The conditions of probation were: remaining within the jurisdiction; prohibition of alcohol consumption; and no involvement with children under 16 years. The offender did not work while on probation. She continued to live with her husband who was under investigation for the sexual abuse of the offender's son.

#### *Case Study 8*

As the second of five children, this 29 year-old woman grew up in a family in which relations were assessed as being poor. She completed Grade 10. Her father, a miner, was described as an alcoholic. At age 24, the offender was admitted to hospital for a drug overdose that was diagnosed as an attempted suicide.

When the sequence of sexual offences occurred, the offender was living with her second husband and their three daughters, aged seven, 10 and 11. The victim was the 10 year-old daughter. The offence involved abuse by both the child's mother and her step-father. The step-father initiated and maintained sexual assaults against the child that included acts of fondling, touching the genitals, oral-genital contact, and forced bestiality by the victim with a dog. The offender, described as passive and dependent, felt she could not refuse to assist her husband, nor did she wish to leave him. The offence was discovered when the offender told a child protection worker that she wanted to end the situation.

The offender was charged with indecent assault on a female and sentenced to 18 months in a correctional institution. The court recommended that the offender receive psychiatric treatment. The offender's husband was convicted and sentenced to imprisonment. The child was taken into custody by the Crown.

Following sentencing, the offender was institutionalized. She was severely beaten by other female inmates and was placed in protective custody. The results of a psychological assessment indicated that she was passive, dependent, low in self-esteem and ignorant of sexual matters. It was concluded that her criminal behaviour was a result of a personality disorder combined with her domestic and social circumstances. Her treatment included assertiveness training and personal counselling for low self-esteem and alcohol problems.

While on probation, the offender initiated divorce proceedings against her husband. Following her release, she rarely worked and relied for support on a combination of social assistance and the men with whom she lived.

In five of the eight case studies, the convicted female offender had been involved with male accomplices, usually a husband, common law partner or friend. The accounts suggest that in most instances, the woman complied with the wishes of her male accomplice(s) in sexually assaulting young victims. In the other three cases, one woman was mentally ill, one had been a victim of incest, and one had had a consensual affair with a male adolescent.

In one respect or another, all of the convicted female offenders had come from unstable family backgrounds, several had grown up in poverty, and six in eight had had broken marriages and/or several sexual partners. The victims were strangers in only one case, that involving the luring of girls on the street. Only one of the victims had been physically injured and, in this case, the child's mother had been mentally ill. In several cases in which the use of alcohol or drugs were factors affecting the offender's mental state, no assessment or treatment was reported to have been recommended at any point following the offender's apprehension. Two of the convicted female offenders were recidivists, in both instances, having previous convictions for non-sexual offences.

## Age of Convicted Offenders

Although there is a masking effect introduced by the fact that the exact age of the convicted offenders was not obtained in one in five cases (20.3 per



cent), the age distribution of those for whom this information was available represented an expected profile. In contrast with the findings of the National Population Survey and the National Police Force Survey in which about a third of the suspected or known offenders were under age 21, only 14.9 per cent of convicted male offenders were in this age category. Considering the variable age limits established by provincial child welfare legislation and the exercising of discretion in the sentencing of young offenders, it is perhaps surprising that about one in seven convicted offenders was under 21 years-old.

**Table 38.5**  
**Age Distribution of**  
**Convicted Male Child Sexual Offenders**

Age of Convicted Offender	Sex of Victims of Convicted Offenders		
	Male Victims (n=129)	Female Victims (n=545)	Multiple Victims (n=21)
	Per Cent	Per Cent	Per Cent
Under age 21	10.1	16.4	4.8
21 - 30 years	18.6	27.5	33.3
31 - 40 years	23.2	21.1	19.0
41 - 50 years	12.4	10.2	9.5
51 - 60 years	6.2	3.6	14.3
61 and older	4.7	1.6	4.8
Not reported	24.8	19.5	14.3
TOTAL	100.0	99.9*	100.0

*National Corrections Survey.*

\* rounding error

In comparison to the age distribution of offenders in the population and police force surveys, proportionately more convicted offenders were older. In the age category 21-40 years, the respective proportions were: population survey, 43.0 per cent; police force survey, 40.0 per cent; and corrections survey, 47.5 per cent. In the age category 41 years and older, while about one in nine offenders (10.8 per cent) in the population survey was an older male, substantially more offenders in the other two surveys were older persons (police force survey, 18.4 per cent; corrections survey, 17.3 per cent).

Three age-related sub-groupings were identified in the National Corrections Survey. There was a sharp decreasing gradient with age among offenders having committed heterosexual offences. Of offences in which males were victims, a more even age distribution occurred, and for the small group having multiple victims, the age profile was high-low-high. On average, convicted offenders committing homosexual offences were older than those committing heterosexual offences.

In relation to whether offenders had been previously convicted, not unexpectedly, more first-time convicted offenders (25.3 per cent) were under age 21 than were recidivists (8.1 per cent, previous sexual offences; 16.8 per cent, previous non-sexual offences). Substantially fewer offenders having previous convictions for non-sexual offences (14.6 per cent) were 41 years-old or older than the proportion of offenders in the other two categories (24.9 per cent, no previous record; and 26.0 per cent, previous sexual offences).

While the findings on age distribution indicate that a smaller proportion of sexual recidivists than that of the other two categories of offenders was under age 21 and that in other respects they were more comparable to offenders having no prior criminal record, when the types of offences involving current convictions are considered, sharp differences emerge along these lines. For offenders having no prior record and previous sexual offence convictions, substantially more of those convicted of heterosexual offences were younger than those convicted of homosexual offences. Offenders having multiple victims fell in between these two groupings. These sharp age differences, however, disappear among offenders who were previously convicted of non-sexual offences, a majority of whom were younger offenders. These findings suggest that it is the type of offence committed rather than an offender's prior record which accounts for the different age groupings of offenders.

When the findings of the several national surveys are considered together, it is evident that an offender's age is a mitigating factor in relation to charges being laid and convictions imposed. The principle of leniency towards young first-time offenders is well recognized in both civil and criminal legislation and its application is documented in the findings of the national surveys conducted by the Committee. Fewer younger child sexual offenders were convicted than those in this age category who had actually committed offences. A relatively large proportion of the offenders was middle-aged, a fact that by itself indicates the need for an assessment of the capabilities of these males for social adaptation either while under supervision or on probation, and when they return from imprisonment to the community.

## Social Background

In the research protocol used to assemble information for the National Corrections Survey, a sizeable number of items was included concerning the social and familial backgrounds of convicted child sexual offenders. Although on the basis of the pretesting of the research protocol it was found that there were substantial gaps in the completion of information for certain items, most of these items were retained since only a few jurisdictions had been involved in this initial phase of the research. However, the results of the pretest were highly accurate in relation to identifying the types of information which it was not feasible to collect from the 10 participating correctional services.

These gaps in missing information were especially prominent concerning the offenders' backgrounds prior to having committed the offences for which they were convicted. In many instances, information of this kind was missing in the available official records for between half and three-quarters of the cases reviewed. To preclude presenting misleading and potentially unrepresentative findings for items for which incomplete information was obtained, only those for which the numerators were somewhat more complete are given.

Of the seven in eight offenders (87.7 per cent) for whom information was available concerning the families in which they had grown up as children, the majority had had both natural parents present during this period of their lives. The members of the nuclear families of these males who were later convicted of sexual offences against children included: natural mothers (93.5 per cent); natural fathers (89.0 per cent); brothers (91.9 per cent); and sisters (92.6 per cent). On average, the convicted offenders had five siblings. At face value, this demographic sketch depicts little that is out of the ordinary, except perhaps for the apparently high level of structurally stable marriages and the larger than average size of the families. This information is barren, however, in relation to providing insights about the emotional dynamics of these families. The findings contrast sharply with those of a number of completed research studies which have found that a relatively high proportion of convicted sexual offenders has grown up in broken homes or has been under the care of someone other than a natural parent(s). In the National Corrections Survey, few of the convicted males had come from totally broken homes and virtually all had brothers and sisters.

A partial measure of the potential instability of the offenders' families is provided by their reported contacts with child protection services. At sometime during their childhood (for reasons for which information was incomplete), one in eight (12.0 per cent) convicted offenders had been removed from his home by a child protection agency. There is no comparative baseline with which this experience can be assessed in relation to that of other types of convicted offenders, or to that of persons who have not been in conflict with the law but who may have been in similar social and economic circumstances.

Either at the time of the conviction or previously, well over half of the convicted child sexual offenders had had an established heterosexual association. In this regard, their experience with broken marriages or common law partnerships was not unusual in relation to that of other Canadian adults.

When they were convicted, two in five convicted male offenders (39.8 per cent) were single, slightly less than three in five (57.4 per cent) were or had been married, and information was not reported for the remainder (2.8 per cent). In relation to their marital status, the experience of convicted male child sexual offenders closely approximated that of sexual offenders having adult and child victims documented in the 1974 federal penitentiary survey.<sup>13</sup>

The marital status of child sexual offenders varied sharply in relation to the gender of their victims. While about three in five offenders having female victims (61.9 per cent) or multiple victims (57.1 per cent) were or had been



**Table 38.6**  
**Marital Status of**  
**Convicted Male Child Sexual Offenders**

Marital Status of Convicted Offender	Sex of Victims of Convicted Offenders		
	Male Victims (n=129)	Female Victims (n=545)	Multiple Victims (n=21)
	Per Cent	Per Cent	Per Cent
Single	58.9	35.5	33.3
Married	19.4	35.2	14.3
Separated/ Divorced	14.7	12.0	33.3
Widowed	—	1.6	—
Common law	5.4	13.1	9.5
Not reported	1.6	2.6	9.5
TOTAL	100.0	100.0	99.9*

*National Corrections Survey*

\* rounding error

married or had had a common law partner, almost an equal proportion of the offenders having male victims (58.9 per cent) had never married.

Because many of the convicted offenders in the survey were either serving sentences or were on parole, the effects of the economic depression of the early 1980s were unlikely to have affected their employment status prior to sentencing. Regardless of the sex or number of their victims, only two in five convicted male child sexual offenders had had full-time employment when they had committed sexual offences for which they were later convicted. About an equal proportion had an unstable job status that included: part-time or seasonal work; unemployment; had never worked; or they were students, disabled, or retired.

In the 1974 Canadian Penitentiary Service Survey of sexual offenders, seven in 10 were unskilled workers, one in nine a skilled worker and the remainder had had an assortment of other types of employment.<sup>14</sup> Despite differences in how the two studies were undertaken, the findings of both are consistent in indicating that **many convicted sexual offenders were on the fringes of the work place, lacked the requisite experience or skills for full-time employment, or had limited job training.** Their work histories suggest that many of the offenders may have subsisted on relatively low incomes. Additional factors which may have affected their employment status, as reported in Chapter 39, *Treatment*, were the high proportion that had at some time been hospitalized for mental illness and that were dependent on alcohol and drugs. In addition to the stigma of having been convicted of a sexual offence against a

child or youth, it can be expected that the social adaptation of these offenders while under supervision or on their return to the community would be sharply hindered by their unstable work careers and limited job skills.

**Table 38.7**  
**Employment Status of Male Child Sexual Offenders**  
**Prior to Conviction**

Prior Employment Status of Convicted Offenders	Sex of Victims of Convicted Offenders		
	Male Victims (n=129)	Female Victims (n=545)	Multiple Victims (n=21)
	Per Cent	Per Cent	Per Cent
Employed	40.3	40.2	38.1
Part-time/ seasonal work	5.4	12.6	4.8
Unemployed	22.5	14.8	9.5
Other	12.4	9.3	19.0
Not reported	19.4	23.1	28.6
TOTAL	100.0	100.0	100.0

*National Corrections Survey.* 'Other' category includes: never worked, student, disabled, retired.

## Type of Association

The classification of the types of association between victims and offenders specified elsewhere in the Report does not refer to the sexual acts committed, but indicates the nature of the relationship between the victim and the offender. Thus, in the category 'relationship of incest', while the blood relatives specified in this sexual offence in the *Criminal Code* are included, sexual acts other than intercourse may have been committed.

**Most of the convicted child sexual offenders had known their victims prior to committing the offences. Overall, only one in four offenders (26.9 per cent) was a stranger, with this type of relationship being more common when boys than girls had been victims.** In contrast, only one in seven offenders (14.3 per cent) having two or more victims was a stranger.

One in 10 offenders (10.4 per cent) had a legal relationship of incest to the child. Of this group, 63 of 72 were natural fathers. **Fathers — natural, step, foster, adoptive and common law — constituted about one in five of the convicted male child sexual offenders (18.7 per cent).** Of the 17 persons who held positions of trust in relation to the child, four were teachers, 11 were babysitters and two were respectively a youth probation officer and a social worker.

Table 38.8

**Type of Association between Victims and  
Convicted Male Child Sexual Offenders**

Type of Association	Male Victims		Female Victims		Multiple Victims	
	No.	%	No.	%	No.	%
Relationship of incest	3	2.3	66	12.1	3	14.3
Other blood relative	4	3.1	21	3.9	3	14.3
Guardianship position	—	—	46	8.4	1	4.8
Other family member	4	3.1	28	5.1	1	4.8
Position of trust	7	5.4	12	2.2	—	—
Friends, acquaintances	27	20.9	106	19.4	4	19.0
Other persons	16	12.4	37	6.8	2	9.5
Strangers	41	31.8	143	26.2	3	14.3
Not reported	27	20.9	86	15.8	4	19.0
TOTAL	129	99.9*	545	99.9*	21	100.0

*National Corrections Survey.*

\* rounding error

Information was not available about the type of association between the victim and offender for one in six cases (16.8 per cent). It is presumed, however, that most of these offenders fell into the 'other' category or were strangers. In general, the types of association between convicted offenders and their victims were comparable to those documented in both the national population and police force surveys. Exceptions included proportionately more persons in positions of trust, and fewer friends and acquaintances who had been convicted. There was a sharp contrast, however, involving the small group of convicted offenders having two or more victims. Two in five of these offenders (38.2 per cent) were relatives or family members (three natural fathers, a step-father, an adoptive father, two uncles and a cousin). Of persons convicted of having committed sexual offences against two or more children, most were either responsible for their welfare or were persons well known to the children.

In the review of the nature of the relationship between the occurrence of recidivism and the type of association between victims and offenders, the categories specifying family members, relatives and persons in guardianship positions were grouped together to provide a single measure of persons responsible for the protection and welfare of the child. The two other categories used were other persons known to victims and strangers.



The survey's findings indicate that there were clearcut differences between the occurrence of recidivism and the type of association between victims and offenders.

Type of Association Between Victim and Offender	Previous Criminal Record of Convicted Offenders		
	None	Sexual Offences	Other Offences
	Per Cent	Per Cent	Per Cent
Family member	33.2	16.4	24.6
Known to victim	46.0	44.6	48.6
Stranger	20.8	39.0	26.8
TOTAL	100.0	100.0	100.0

Regardless of the type of sexual offence committed, a majority of offenders (79.2 per cent) having no prior criminal record had been known to victims. By the types of offences committed, the proportions in this category were: 75.5 per cent, homosexual offenders; 79.5 per cent, heterosexual offenders; and 88.9 per cent, offenders having multiple victims. On average, somewhat fewer non-sexual recidivists (73.2 per cent) were known to victims but sharper variations occurred in this regard in relation to the types of sexual offences committed. While about three in four offenders having multiple victims (75.0 per cent) and those having committed heterosexual offences (76.4 per cent) were known to victims, only over half (54.5 per cent) of non-sexual recidivists who had committed homosexual offences were previously known to the male victims of the offences for which they were currently sentenced.

In contrast to first-time convicted offenders and non-sexual recidivists, proportionately more sexual recidivists, about two in five (39.0 per cent) were strangers to victims. In relation to the types of offences committed, the proportions of offenders who were strangers were: 30.4 per cent, homosexual offenders; 44.8 per cent, heterosexual offenders; and 12.5 per cent, offenders having multiple victims.

In comparison to whether offenders were known to victims, the relationship between recidivism and the type of association was even more pronounced in the instance of offences committed by offenders who were family members. Offenders who were in a familial position of trust to the child constituted one in six sexual recidivists (16.4 per cent), one in four non-sexual recidivists (24.6 per cent) and one in three offenders (33.2 per cent) having no prior criminal record. The survey's findings indicate clearly that **in comparison to offenders convicted for the first time and non-sexual recidivists, substantially fewer sexual recidivists were family members and proportionately more of them were strangers.**

## Assaults by Groups

About one in 14 of the convicted child sexual offenders (7.3 per cent) had had one or more accomplices in committing sexual offences against children (7.1 per cent, female victims; 8.5 per cent, male victims). Although the proportion of gang sexual assaults was comparable to that found in the cases reported to public services (8.1 per cent, police, hospitals, child protection services), there was an inversion in the findings obtained in the National Corrections Survey in relation to the sex of the victims.

In the National Corrections Survey, one in 12 convicted offenders (8.5 per cent) had had one or more accomplices in offences committed against male victims in contrast to one in 22 suspected or known offenders (4.5 per cent) who had come to the attention of the police, hospitals or child protection services. This finding is noteworthy since it indicates that group homosexual offences are not an isolated occurrence and that attacks of this kind are likely to be considered serious aggravating factors on sentencing. The gravity with which offences of this kind are seen appears to be further confirmed by the finding that while in cases known to public services group sexual assaults involved proportionately twice as many female as male victims, among convicted child sexual offenders, such offences against male victims for which male offenders had been convicted occurred about a fifth more often than those against females.

In the National Corrections Survey, two in five of the accomplices (40.6 per cent) were the convicted offenders' friends and one in five (18.8 per cent) was a brother. Charges were laid in nine in 10 cases of this kind (90.6 per cent); four in five of the accomplices (81.3 per cent) were subsequently convicted. Twenty-one of the 695 convicted male child sexual offenders (3.0 per cent) had committed sexual offences against two or more victims. In this group, there was one instance in which two or more offenders had sexually assaulted two or more victims.

## Summary

1. Of 703 convicted child sexual offenders, 695 were males and eight were females. Of male offenders, 545 had female victims, 129 had male victims and 21 had multiple victims. About one in three offenders (37.7 per cent) had no prior criminal record and one in four (25.8 per cent) was a sexual recidivist. Recidivism varied in relation to the types of offences committed, respectively: 21.5 per cent, heterosexual offenders; 39.5 per cent, homosexual offenders; and 52.4 per cent, offenders having multiple victims.
2. Male victims, on average, were younger than female victims. With the exception of the female victims of sexual recidivists, the male victims of homosexual offenders were younger than the female victims of first-time offenders and non-sexual recidivists.

3. Less than half of the sexual offences were committed in private locations and about a third in public locations. Females were twice as likely as males to have been victimized in their own homes, and there was a greater likelihood of offences committed in the home having younger victims.
4. In comparison to the sexual acts committed against children and youths documented in the other national surveys conducted by the Committee, proportionately more sexual offences committed by convicted offenders had involved attempted and completed acts of vaginal and anal penetration. For half of the females, some form of vaginal penetration had been attempted or completed. Attempted or completed anal penetration had been committed against one in four male victims.

On average, proportionately more serious sexual acts were committed against female victims than against male victims and acts of this kind were more frequently committed by non-sexual recidivists than by either sexual recidivists or first-time convicted offenders.

5. Two in five victims had been threatened or physically forced by convicted offenders with this happening more frequently to female victims than to male victims. The use of threats and coercion varied in relation to the offenders' prior criminal record being used respectively by: a third of first-time offenders; less than half of the sexual recidivists; and half of the non-sexual recidivists.
6. One in eight victims had been physically injured by convicted offenders. The distribution of victims who were injured varied in relation to the types of offences committed and whether offenders had previous convictions. There was a sharp gradient in relation to recidivism with non-sexual recidivists being more dangerous in this regard than sexual recidivists.
7. Virtually all convicted child sexual offenders were males with 1.1 per cent being females.
8. In comparison with the findings of the other national surveys, proportionately more of the convicted offenders were older, and in this regard, homosexual offenders, on average, were older than heterosexual offenders. In relation to recidivism, the findings suggest that the type of offence committed rather than prior convictions is more likely to account for subgroupings of age differences among convicted offenders.
9. Nine in 10 offenders had grown up in homes having both natural parents and siblings, about one in eight had been taken into custody by a child protection agency, and about three in five were, or had been, married. Prior to having committed the offence, two in five offenders had had some form of full-time employment.
10. Fathers — natural, step, foster, adoptive and common law — constituted about one in five convicted offenders. The majority of offenders were known to their victims with only one in four having been a stranger. In contrast to first-time offenders and non-sexual recidivists, proportionately more sexual recidivists were strangers to victims. A third and a quarter respectively of first-time offenders and non-sexual recidivists were in a familial position of trust to the child.



11. About one in 14 convicted offenders had had one or more accomplices in committing the offences.

In undertaking the National Corrections Survey, the Committee identified several dimensions of how service statistics are typically assembled by the Canadian correctional system. While there is usually uniformity in respect to the types of records maintained within each correctional jurisdiction, several services do not have computerized record systems. Where these systems have been established, the information so transferred is assembled to expedite administrative functions. There is no common basis between correctional systems across Canada in regard to the collection of similar types of information about offenders. **For Canada as a whole, there is no single inventory or register that permits the identification of convicted sexual offenders in relation to the age and sex of victims. Accordingly, there is now no means available to determine on a national basis how many convicted persons are child sexual offenders, rapists of girls or adult women, or sentenced for other types of sexual offences.** In this regard, and in the absence of documentation, it is widely assumed that conditions in federal penitentiaries are harsher for inmates and less conducive to their successful return to the community than detentions served in provincial prisons. However, at least with respect to convicted child sexual offenders, this assumption is a matter of informed opinion, or conjecture, rather than one founded on documentation of the outcomes of different types of incarceration or supervision.

The correctional information systems in use across Canada are offender, not victim-oriented. In this respect, it is not apparent how a sufficient assessment can be made of the relative effectiveness of different sentences or treatments provided unless more complete and comprehensive information is available on a routine basis than is currently the case about these offenders and their victims. As clearly shown elsewhere in the Report, the charges laid or the sentences imposed are imprecise means to serve as a basis of assessing the actual types of sexual offences committed. Many of the sexual offences in the *Criminal Code* are neither age nor sex-specific. In this respect, information relying exclusively on reported sexual offences is wholly inadequate to serve as a means of identifying victims.

In assembling its findings, the Committee found that basic information concerning offenders contained in existing correctional records systems was invariably more detailed and complete than the service statistics which were derived from these case reports. What has evolved, however, in the assembling of these statistics is the collation of haphazardly collected information that is not systematically reviewed in relation to: its completeness; its relevance concerning the efficacy of treatment; the follow-up of offenders on parole; and its utility in regard to documenting the occurrence and consequences of recidivism.

In identifying these deficiencies in the information systems of Canadian correctional services, the Committee reiterates concerns that have been voiced for over a century. Speaking in the House of Commons in 1875 concerning the

need for detailed statistics concerning matters of criminal jurisprudence, Mr. Dymond of North York is reported to have said:

“... it did certainly seem extraordinary that while since Confederation we had consolidated the criminal laws, and whilst during every session measures had been introduced altering or amending the criminal law, we had no evidence upon which to base conclusions as to whether these amendments were necessary or not. In our present state of darkness we had no information that enabled us to ascertain what crimes were increasing or decreasing . . . ”<sup>15</sup>

In speaking to the Second Reading of the *Bill to Provide for the Collection and Registration of Criminal Statistics* in 1876, the Honourable Mr. Blake cited:

“... the importance of our obtaining such statistics as may inform the minds of us who are responsible for those laws which proscribe what are crimes, the penalties for them, the criminal procedure, and the general effect of the laws upon the criminal class, as might enable us, per chance with wisdom, to amend them.”<sup>16</sup>

As noted in Chapter 13, *Historical Statistical Trends*, a system of collecting information concerning convicted offenders in custody or under supervision of federal correctional services was established during this period. Since shortly after its inception, however, the federal correctional information system has been the target of severe criticism both in Parliament and in reports of advisory inquiries. In a discussion of the utility of these statistics, Mr. Mills observed in Parliament in 1884 that “it has really no value whatever, the information is altogether unreliable and the classification very imperfect.”<sup>17</sup> Almost two decades later, speaking in 1902 on the same issue in Parliament, Mr. Clancy observed “I know no more dangerous thing than a service which stands still. It seems to be seized with dry rot.”<sup>18</sup>

Similar conclusions have subsequently been reached in several reports of inquiries appointed to review federal correctional services. The 1938 *Report of the Royal Commission to Investigate the Penal System of Canada* (Archambault Report) observed that “. . . we find that there is a great lack of uniformity in the compilation of statistics respecting crime in Canada; so much so that it would be dangerous to draw definite conclusions from the present statistical material.”<sup>19</sup> The 1938 Royal Commission recommended that “a complete revision of the method of preparing statistical information”<sup>20</sup> be undertaken. These recommendations were reiterated in the reports of federal inquiries issued respectively in 1956 (*Fauteux Report*)<sup>21</sup> and 1958 (*McRuer Report*).<sup>22</sup>

These issues were also addressed in the 1969 *Report of the Canadian Committee on Corrections* (Ouimet Report). This Report concluded:

“The corrections field in Canada as in most countries has suffered from a lack of comprehensive, continuous and long-term planning based, as far as possible, on empirical information. Planning has tended to be sporadic or limited in scope and little use has been made of research . . . ”<sup>23</sup>



The primary need in relation to criminological research is a conviction on the part of both government authorities and the public that research findings are essential in determining policy and in operating the law enforcement, judicial and correctional services. Until recently, policy-making has been based exclusively on common sense and on the impressions picked up by individuals in the course of their work. This is in sharp contrast to what is done in matters involving the physical and biological sciences.<sup>24</sup>

It is also important that research findings be published . . . Publication makes research findings available to other workers for checking. Also, publication of research material enables the public to judge effectiveness of the services.<sup>25</sup>

. . . if research is to have its maximum effect, there should be organized and continuous procedures to ensure that the findings of research will be implemented.<sup>26</sup>

. . . there are limits on the kind and scope of research a public service can conduct. Government research workers are not normally free to publish research findings that are in conflict with government policy. There is often a split in jurisdiction between departments. This makes comprehensive study of a problem difficult. A third handicap suffered by the government research worker is the need to keep up with day-to-day problems faced by the present operating services. This does not leave much time or many facilities for basic research."<sup>27</sup>

Although advised by some senior administrators and experienced criminological researchers before it started its review that it was not feasible to obtain the information being sought and that most jurisdictions would likely be uncooperative, the Committee in fact received valuable and effective assistance from federal and provincial correctional services in the design of the research protocol and the implementation of the National Corrections Survey. While the Committee fully recognizes that more indepth research conducted over a longer period of time is required to provide fuller documentation concerning the difficult issues reviewed, the undertaking of the survey leaves no doubt that it is feasible to conduct such research on a national scale. Those persons who believe that there are insuperable obstacles precluding such research either have apparently not attempted such an undertaking, or they have been prematurely deterred by their preconceptions of what they believed the difficulties to be.

**The Committee fully endorses the recommendations of earlier federal inquiries concerning the need for establishing a more effective correctional information records systems concerning problems of national importance such as convicted offenders who have committed sexual offences against children and youths. In the Committee's judgment, there is a need in relation to convicted child sexual offenders to establish a correctional record system that incorporates basic information on:**

- 1. *The Offender(s)*. Age, sex, education, job skills, work experience, family background, marital status, physical and mental state.**
- 2. *The Victim(s)*. Age, sex, relationship to offender.**



3. *Current Conviction.* Listing of specific sexual acts committed, use of threats/force, injuries to victims, accomplices, offences resulting in convictions, sentencing decisions.
4. *Previous Criminal Record.* Specifying convictions, age and sex of previous victims, court disposition, subsequent charges known to have been laid.
5. *Services Provided.* Provision of medical, psychiatric, psychological, vocational, educational services.

In the implementation of this minimum standard correctional information record system, the Committee believes that its requisite components should incorporate the following elements:

6. *National in Scope.* Information about convicted child sexual offenders should be obtained from all jurisdictions — federal, provincial and territorial.
7. *Computerized Storage.* For purposes of efficiency in management and retrieval of information.
8. *Updating of Information.* Upon discharge from custody, completion of probation or parole.
9. *Periodic Review by Participating Jurisdictions.* To assess the more effective operation of the information system.

As specified in Chapter 3, *Recommendations*, the Committee calls for the establishment of a standard national correctional information records system in relation to convicted child sexual offenders and that the development and operation of this system be undertaken jointly by federal, provincial and territorial correctional services.

## References

### Chapter 37: Convicted Offenders

- <sup>1</sup> Searle, C.A., *A Study of Sexual Offenders in Canada and a Proposal for Treatment*, Ottawa: Canadian Penitentiary Service, 1974 (mimeo).
- <sup>2</sup> Canada. Law Reform Commission of Canada. Working Paper 22. *Criminal Law - Sexual Offences*. Ottawa: Supply and Services Canada, 1978, p. 35.
- <sup>3</sup> Gigeroff, A.K., J.W. Mohr and R.E. Turner, Sexual Offenders on Probation: II. Heterosexual Pedophiles. *Federal Probation*, 32 (4): 17, 1968.
- <sup>4</sup> Searle, C.A., *op. cit.*
- <sup>5</sup> Christie, M.M., W.L. Marshall and R.D. Lanthier, *A Descriptive Study of Incarcerated Rapists and Pedophiles*, Kingston: Canadian Penitentiary Services, 1977 (mimeo), pp. 27-28.
- <sup>6</sup> Quinsey, V.L., The Assessment and Treatment of Child Molesters: A Review, *Canadian Psychological Review*, 18: 218, 1977.
- <sup>7</sup> Gigeroff, A.K., *op. cit.*, p. 20.
- <sup>8</sup> Quinsey, V.L., *op. cit.*, pp. 212-213.
- <sup>9</sup> West, D.J., C. Roy and F.L. Nichols, *Understanding Sexual Attacks*, London: Heineman, 1978.
- <sup>10</sup> Marcus, A.M. and C. Conway, Dangerous Sexual Offender Project, *Canadian Journal of Corrections*, 11: 198-205, 1969.
- <sup>11</sup> Marcus, A.M. and C. Conway, A Canadian Group Approach Study of Dangerous Sexual Offenders, *International Journal of Offender Therapy*, 15: 60-61, 1971.
- <sup>12</sup> Quinsey, V.L., *op. cit.*, pp. 212-213.
- <sup>13</sup> Searle, C.A., *op. cit.*
- <sup>14</sup> *Ibid.*
- <sup>15</sup> Canada. *Debates of the House of Commons of the Dominion of Canada, Second Session, Third Parliament*, Ottawa, 1875, p. 214.
- <sup>16</sup> Canada. *Debates of the House of Commons of the Dominion of Canada, Third Session, Third Parliament*, Ottawa, 1876, p. 189.
- <sup>17</sup> Canada. *Debates of the House of Commons of the Dominion of Canada, Second Session, Fifth Parliament*, Ottawa, 1884, pp. 1089-90.
- <sup>18</sup> Canada. *Debates of the House of Commons of the Dominion of Canada, Second Session, Ninth Parliament*, Ottawa, 1902, p. 335.
- <sup>19</sup> Canada. *Report of the Royal Commission to Investigate the Penal System of Canada*. Ottawa: King's Printer, 1938, p. 174.
- <sup>20</sup> *Ibid.*, p. 359.
- <sup>21</sup> Canada. Department of Justice. *Report of a Committee Appointed to Inquire into the Principles and Procedures followed in the Remission Service of the Department of Justice of Canada*. Ottawa: Queen's Printer, 1956.
- <sup>22</sup> Canada. *Report of the Royal Commission on the Criminal Law Relating to Criminal Sexual Psychopaths*. Ottawa: Queen's Printer, 1958.
- <sup>23</sup> Canada. Department of the Solicitor General. *Report of the Canadian Committee on Corrections*. Ottawa: Queen's Printer, 1969, p. 423.
- <sup>24</sup> *Ibid.*, pp. 423-24.
- <sup>25</sup> *Ibid.*, p. 424.
- <sup>26</sup> *Ibid.*, p. 426.
- <sup>27</sup> *Ibid.*, p. 427.

## Chapter 39

# Treatment

This chapter reviews the development of treatment services provided in correctional institutions, draws upon the findings of the National Corrections Survey concerning the mental health state of convicted child sexual offenders and the provision of mental health treatment services for them, and presents case studies which illustrate the types of circumstances in which courts on sentencing may make recommendations concerning the need for the assessment and treatment of these offenders.

## Development of Services

While it has long been recognized as a complex and contentious issue, a full historical account remains to be written that documents the development and provision of treatment services for convicted offenders by federal and provincial correctional services. This debate, which has received much public attention and has also been a divisive issue within correctional services, has turned upon a number of critical issues, including whether:

1. The treatment services being provided at a particular period were adequate, or should be considerably strengthened.
2. The provision of medical and mental health services should be directly provided by correctional services, or should be given under the aegis of external provincial health institutions, either on an inpatient or outpatient basis.
3. Some prisoners, such as convicted sexual offenders, need treatment, or whether they should be considered to be criminally deviant.
4. If treatment is provided for sexual offenders, whether special programs should be tailored to meet their needs, or they should receive services available to all inmates.
5. Individuals deemed to be in need of medical care, particularly mental health therapy, should be required to obtain such services, or whether this decision should remain a matter of personal choice.



6. The provision of treatment services can be shown to be therapeutically beneficial, or whether no measurable gains are to be realized by the provision of these services, particularly in relation to reducing the level of recidivism.

These issues are not new concerns. They were initially considered in the early reports of the *Directors of Penitentiaries*; since that time, they have subsequently been expanded upon, but not resolved. Dating back at least to 1849 when George Brown led a *Commission of Inquiry* into the operation of the Kingston Penitentiary, a series of public investigations have been conducted into the conditions of the mentally ill who have been under the supervision of correctional services. As a result of the 1849 Inquiry, a new criminal lunatic asylum was established at Rockwood. These new facilities, however, soon proved to be insufficient to house all of the prisoners deemed to need segregated attention.

Writing with a perspicacity which identified issues that have not yet been fully dealt with, the Medical Superintendent of the Rockwood Asylum in 1865 called for a clear medical classification of inmates, their segregation into distinctive groupings for the purposes of management and treatment, and the provision of special services to facilitate their potential cure and rehabilitation.<sup>1</sup> Following Confederation, arrangements were made between the federal and provincial governments concerning the management of criminally insane prisoners. In this regard, the *First Annual Report* of the federal *Directors of Penitentiaries* for 1868 noted that "this arrangement, made by the Provincial with the Dominion Government for the reception into the Rockwood Asylum of the unfortunate lunatics confined in the gaols of Ontario was a most humane one."<sup>2</sup>

However, it is evident at that time that not all prisoners who may have required medical attention were transferred to provincial asylums. The situation of those who were in the Kingston Penitentiary in 1884 was described by the attending surgeon. Of "the inmates of the insane ward . . . most . . . are broken down physically as well as mentally, and so far as restoration to soundness of mind is concerned, [are] utterly hopeless."<sup>3</sup>

These arrangements involving the joint provision of services continued for a number of years. The 1913 *Commission* appointed to review the condition of the insane ward in the Kingston Penitentiary proposed two alternatives, the first being to contract all such services to the provinces while the second option would have involved the erection of a separate institution by the federal service for the care of criminally insane inmates. Following World War I, the federal Minister of Justice appointed a *Commission of Inquiry* into the conditions of mentally disordered offenders. The 1921 Commission concluded that:

" . . . the existing provisions on the subject of insane prisoners are not satisfactory and indicate an obsolete and unscientific view of mental diseases." The Commission recommended that amendments be made to the Penitentiary Act to "authorize the employment, for the examination, treatment or care of

any convict who is seriously ill, either physically or mentally, of such specialists and nurses as are necessary in the circumstances, and the medical supervision of any penitentiary may be entrusted to the faculty of medicine of any recognized university.”<sup>4</sup>

The 1938 *Royal Commission to Investigate the Penal System of Canada* (Archambault Report) noted about the decision that was reached concerning the two options put forward in 1913 that “we think the penitentiary administration was wise in adopting the former suggestion and discarding the latter.”<sup>5</sup> Among the reasons given by the 1938 *Archambault Report* for supporting this earlier decision were that the establishment of a federal facility would have been too expensive and that “the period of treatment would be broken, because the responsibility of the Government of Canada to maintain the prisoners would terminate with their sentences.”<sup>6</sup> Accordingly, some three decades later, the 1938 *Archambault Report* recommended “that the most efficient method of caring for insane prisoners in the penitentiaries is by continuing and expanding the present friendly arrangements that are in effect between the federal and provincial authorities.”<sup>7</sup>

During the interval between these two inquiries, treatment services were expanded both within custodial institutions and by provincial mental health services. By 1938, the *Archambault Report* noted that a physician and a dentist were in attendance at all federal custodial institutions. In addition to these services, the Commissioners recommended “that the services of a psychiatrist are also essential if a thorough examination is to be made and proper treatment is to be given to each individual prisoner.”<sup>8</sup> The Commission further recommended that “a complete revision of the methods of classification of prisoners should be made, with provision for a thorough medical and psychiatric examination of prisoners.”<sup>9</sup>

Provincial forensic services were also developed and expanded during this period. In 1926, for instance, a forensic inpatient service was established at the Toronto Psychiatric Hospital to provide for the psychiatric investigation of suspected criminals.<sup>10</sup> Several decades later, as a result of public concern about several incidents involving sexual assaults against children, and stemming from a meeting convened by the Toronto Daily Star, an outpatient forensic clinic was established at this hospital in 1956.<sup>11</sup> Its objectives were to provide pre-sentencing assessments and treatment, to conduct research and to serve as a teaching facility.

The recommendations of the 1956 *Fauteux Report* (*Committee Appointed to Inquire into the Principles and Services followed in the Remission Service of the Department of Justice*) constituted a significant turning point with respect to the issue of whether special treatment services should be provided for certain classes of convicted offenders. This Committee recommended that “special types of institutions, with specialized treatment, should be provided for alcoholics, drug addicts, sex offenders and psychopaths.”<sup>12</sup>



The 1956 *Fauteux Report* also reiterated the recommendations of the 1921 *Commission of Inquiry* and the 1938 *Archambault Report* concerning the need for an adequate assessment of the physical and mental health state of convicted offenders.

“At the present time psychiatric treatment, in some degree, is available at most federal and some provincial institutions. We recognize that a serious shortage of practising psychiatrists exists, but we must nevertheless record our view that no modern prison system can operate effectively without psychiatric service on a much more extensive basis than now exists.”<sup>13</sup>

These recommendations of the 1956 *Fauteux Report* were strongly supported by the 1958 *Royal Commission on the Criminal Law relating to Sexual Psychopaths* (McRuer Report). The latter inquiry recommended that “special provision be made in the penitentiary system for the custody, control and treatment of every sexual offender undergoing preventive detention, and section 666 C.C. be amended accordingly.”<sup>14</sup> In reaching this conclusion, the 1958 Royal Commission noted that while:

“... in the present state of medical knowledge it is not possible to speak with assurance about “curing” the class of offenders we are considering,”<sup>15</sup> that nevertheless, “once a person has been sentenced to preventive detention by reason of the manifestation of sexual abnormalities he should be exposed to the best clinical treatment known rather than included in the ordinary prison population.”<sup>16</sup>

In 1963, the Commissioner of Penitentiaries introduced a “Ten Year Plan” for the construction of new correctional facilities across Canada, including the establishment of several Regional Medical Centres. Six years later, the *Canadian Committee on Corrections* (1969 Ouimet Report) appointed by the federal Department of the Solicitor General noted that:

“The ten year plan of the Federal Penitentiary Service contemplates a medical-psychiatric centre within each regional complex. The Commissioner of Penitentiaries has informed the Committee that three major centres will be located at Ste. Anne des Plaines, Quebec, Millhaven, Ontario and in Saskatoon, Saskatchewan. Present plans call for the completion of the centres at Ste. Anne des Plaines and Millhaven by 1972 and completion of the centre in Saskatoon by 1973. Smaller centres are to be established at Mission, British Columbia, and Dorchester, New Brunswick by 1974.

Such medical-psychiatric centres might be used not only for custody and treatment, but for diagnosis and assessment. Mental hospitals, and psychiatric institutes with secure wings such as the Ontario Hospital at Penetanguishene, the Clarke Institute of Psychiatry, and l’Institut Phillippe Pinel might also be used as diagnostic facilities.”<sup>17</sup>

The 1969 *Ouimet Report* further recommended that “such facilities are, of course, required and should be available for the treatment of offenders other than those classified as dangerous . . .”<sup>18</sup>

The Committee on Sexual Offences against Children and Youths found on the basis of its general review of the Canadian professional and scholarly



research literature (see Chapter 1) that prior to the issuing of the 1956 *Fauteux Report*, little attention had been paid by researchers to the issue of the treatment of convicted offenders. However, during the decade and a half following the release of the 1956 Report, and in part stimulated by the work of earlier federal inquiries, a small but steady flow of professional and scholarly commentary emerged, most of which dealt with conceptual concerns or described the operation of particular forensic services.<sup>19</sup> Much of this work drew heavily upon research conducted abroad and transposed these findings as though they were applicable to the Canadian scene.<sup>20-37</sup> At this time, only a handful of these reports provided empirical documentation concerning the treatment of convicted offenders in Canadian correctional institutions.

Between 1971 and 1973, the federal Department of the Solicitor General appointed two medical advisory committees whose members included distinguished leaders of the medical profession. *The Advisory Board of Psychiatric Consultants* (Chalke Committee) was established in 1971 in order to develop "a master plan for the further development of psychiatric services" for the Canadian Penitentiary Service. The 1972 *Chalke Report* called for the establishment of five regional psychiatric centres. It also proposed a framework for the administration, provision and evaluation of correctional psychiatric services. Included among its several recommendations were:

"The greatest problems arise in the area of evaluation of the effectiveness of special psychiatric programs aimed at correction of specific offenders or the modification of behaviour in such a way as to reduce recidivism, criminality, dangerousness, or socially unacceptable conduct."<sup>38</sup>

The Psychiatric Advisory Board must urge the development of an adequate competent research establishment including appropriate relationships between the penitentiary service, parole service and provincial correction service.<sup>39</sup>

Moreover, we urge that it be clearly accepted that Canada is prepared to subject all our correctional undertakings to the most rigid evaluation and set an example to other jurisdictions, in openly making known all our findings to those most concerned."<sup>40</sup>

On the basis of information obtained from the directors of correctional facilities, the 1972 *Chalke Report* concluded that 10.2 per cent of inmates required psychiatric care and treatment. Beyond tabling this estimate, the conclusions and recommendations of this inquiry were not grounded upon an empirical documentation of the physical and mental health assessment of convicted offenders.

In the Foreword to the 1972 *Chalke Report*, the federal Solicitor General stated that he was "profoundly impressed by the recommendations made by this authoritative body" and that he was requesting the Canadian Penitentiary Service "to develop its psychiatric services to assure that facilities are provided for the diagnosis, care, and treatment of acutely and severely ill inmates", and the development of "clinical investigation and evaluation."<sup>41</sup>

In 1973, the Department of the Solicitor General established the *National Health Services Advisory Committee to the Commissioner of Penitentiaries*. The First Report of the *Advisory Committee* submitted 48 recommendations<sup>42</sup> while the Second Report issued in 1976 contained 76 recommendations. The primary emphasis of the two reports focussed on the re-organization of federal correctional health services. The *Advisory Committee* reiterated the concern that "high priority should be given to the prompt development of regional medical and health care services reception centres,"<sup>43</sup> that these units "should produce a comprehensive multidisciplinary medical report"<sup>44</sup> of inmates, and that "chart audits should take place regularly, either by a peer review committee or by a national consultant, as a method of evaluating and improving the quality of care."<sup>45</sup>

In 1974, the Commissioner of the Canadian Penitentiary Service appointed a special Work Group chaired by a Regional Director of the federal correctional services. Its mandate was "to investigate and report upon the feasibility of establishing in Canada a pilot project for the treatment and reintegration of sexual offenders into society."<sup>46</sup> The 1975 Report of the *Trono Committee* summarized what had occurred in relation to the recommendations of previous inquiries concerning the provision of treatment services for convicted sexual offenders.

"As long ago as 1958, a Royal Commission advocated that 'an organized scientific study' be undertaken to develop 'improved methods of treatment for (sexual offenders) committed to prisons . . .'. Nothing of any significance in this area was accomplished until 1973 when the Regional Psychiatric Center in Abbotsford, British Columbia, instituted a treatment program for sexual offenders. It is well understood and documented, however, that that program though expensive and well intentioned is hampered by the limiting prison environment. A second program has been operating at the Regional Psychiatric Center (Ontario) since January 1974 utilizing pschotherapy and behaviour modification techniques, but it, too, is subject to the same environmental limitations as the program in Abbotsford.

What is urgently required is a separate and unique non-prison environment where new treatment concepts, already proven, may be applied in the context of a demonstration project to be subsequently evaluated, possibly modified, developed and replicated. A survey of ten institutions — two maximum, three medium, three minimum and two correctional camps — carried out by Dr. G. Scott in the Ontario Region in August, 1974 revealed that the Directors and senior staff of the medium and maximum institutions were in total agreement that a separate accommodation be established.

The need for the program was considered urgent in 1958. Today, that need is alarming. The number of sexual offenders incarcerated in federal institutions in Canada grew from 495 in January 1974 to 656 by May 30th, 1975 — an increase of 32.3% over 17 months."<sup>47</sup>

In 1974, the Executive Secretary of the *Trono Committee* had undertaken what appears to have been the first complete listing and description of convicted sexual offenders in federal custody.<sup>48</sup> The *Trono Committee* drew upon and up-dated the findings of the research report and recommended that:



- 1. There be a separate Center established for the treatment and rehabilitation of sexual offenders.
- 2. The treatment administered in this Center be based on the theory and practice followed in the Fort Steilacoom program.<sup>49</sup>

If the 1975 *Trono Committee's* second recommendation had been acted upon concerning the modelling of the treatment program along the lines of the Fort Steilacoom program established in the State of Washington, it could have entailed the release of convicted offenders prior to their parole who were deemed to have been successfully cured or rehabilitated. Since in Canada there is no legislative authority permitting the discharge of prisoners having determinate sentences and who may have been successfully treated prior to their being paroled or released, the *Trono Committee's* second recommendation was set aside. The Committee's Report, however, with the second recommendation having been deleted, was up-dated in 1977.<sup>50</sup> In 1980, two new initiatives were undertaken at the federal level. The first involved a brief listing of treatment services provided for sexual offenders who were in federal custody<sup>51</sup> and the second was a survey in which attending correctional professional workers were asked to assess whether they believed that sexual offenders needed treatment.<sup>52</sup> The 1980 *Needs Assessment Survey* also obtained information from 557 sexual offenders about whether they had received treatment.

Although the 1980 survey of existing treatment services provided few details about the nature of the services provided, it concluded that:

It can be generally observed that all regions provide sex offenders with access to treatment facilities. In the province of Quebec where no federal institution provides specific treatment facilities, sex offenders who request treatment are referred to the provincially operated Institute Phillippe Pinel. In recent years, two new psychiatric hospitals in Abbotsford and Saskatoon have been opened to provide specific services to sexual offenders requiring and requesting treatment.<sup>53</sup>

The 1980 *Needs Assessment Survey* found that attending professional staff reported that seven in 10 convicted sexual offenders (69.7 per cent) needed some form of treatment. The basis for making this assessment was not specified. In the complementary survey of 557 sexual offenders, about one in four (27.6 per cent) had received some form of treatment.<sup>54</sup>

Assessment of Whether Treatment Needed	Provision of Treatment					
	Provided		Not Provided		Total	
	No.	%	No.	%	No.	%
Treatment needed	124	32.0	264	68.0	388	100.0
No treatment required	30	17.8	139	82.2	169	100.0
TOTAL	154	17.6	403	72.4	557	100.0



Over two-thirds (68.0 per cent) of the sexual offenders who had been assessed by attending staff as requiring treatment had not received such services. For this group, the principal reason cited was that two in five of these offenders (43.4 per cent) had refused to participate in the treatment programs provided. Other reasons accounting for their refusals were that some offenders did not believe that they needed treatment, while others were afraid of the risks involved.

**In reviewing the development of treatment services for convicted offenders, what stands out sharply from the historical record is that, although the recommendations of several federal inquiries have been clear and consistent, at the present time, there is only fragmentary and incomplete information available about virtually all aspects of treatment services provided for sexual offenders by federal and provincial correctional services. There is now no publicly available, adequate documentation concerning the following issues.**

- 1. The total number of sexual offenders who are in custody of federal and provincial correctional services.**
- 2. A complete listing of: the types of treatment facilities available; the personnel resources deployed; and their experience and qualifications.**
- 3. The utilization of general medical and hospital services by convicted sexual offenders.**
- 4. A complete description of the nature of the counselling, behaviour modification, psychotherapy and other forms of treatment provided for sexual offenders.**
- 5. A complete documentation of how many sexual offenders have participated in these programs, details concerning the services provided, by whom these services were given, and how offenders were selected to participate in the treatment programs.**
- 6. The timing, relative to the length of an offender's sentence, when treatment services were given — upon admission, during the course of imprisonment, near the completion of imprisonment, or when a discharged offender was on parole.**
- 7. The specification of the treatment programs provided with respect to different types of sexual offenders (e.g., offenders having had male child victims, rapists, incest offenders).**
- 8. Assessments of efficacy involving a comparison of the outcomes of treated and untreated offenders, including an evaluation of the utility of different types of treatment and a monitoring of the short and long-term consequences of having been provided with these services relative to changes in values, behaviour and altered levels of recidivism.**

For the reasons listed, the Committee knows of no Canadian study that has assembled reasonably sufficient documentation for convicted child sexual offenders concerning these issues.

# Prior Hospitalization for Mental Illness

In the National Corrections Survey, about one in six (17.7 per cent) convicted male child sexual offenders was reported to have been hospitalized for mental illness at least once prior to his current conviction. While there appear to be no comparable Canadian findings in relation to the reported occurrence of hospitalization for mental illness of child sexual offenders, these findings are strikingly similar to those of two other reports in which the extent of mental illness among sexual offenders was reported. In a 1954 survey of 3112 juvenile sexual offenders who had appeared in juvenile courts over a 10 year period in Toronto, the reported prevalence of serious personality disorders was 20 per cent among young male delinquents in comparison to 11 per cent among young female delinquents.<sup>55</sup> In a second study reported in the mid-1970s, one in five (19 per cent) of 47 offenders who were being treated at the Regional Psychiatric Centre at Abbotsford, British Columbia was considered to have been mentally ill by attending psychiatrists.<sup>56</sup> The report concluded that there is a "necessity for careful assessment of all sex offenders so that the appropriate treatment can be instituted for the individual offender at the earliest possible time."<sup>57</sup>

Table 39.1  
Reported History of Hospitalization for  
Mental Illness Prior to Current Conviction

Sex of Victim of Current Conviction	Proportion of Convicted Male Child Sexual Offenders Previously Hospitalized for Mental Illness					
	Dangerous Offenders (n=62)		Other Offenders (n=633)		Total (n=695)	
	No.	Non- Accum. %	No.	Non- Accum. %	No.	Non- Accum. %
Male victims	7	35.0	25	22.9	32	24.8
Female victims	12	30.8	75	14.8	87	16.0
Multiple victims	1	33.3	3	16.7	4	19.0
TOTAL	20	32.3	103	16.3	123	17.7

National Corrections Survey. The denominators used in calculating the proportions listed are given in Chapter 41, *Dangerous Sexual Offenders*, under the Sex and Age of Victims.

In the National Corrections Survey, the proportions of offenders known to have been previously hospitalized for mental illness in relation to the types of sexual offences committed against children and youths were: 24.8 per cent, homosexual offenders; 16.0 per cent, heterosexual offenders; and 19.0 per cent, offenders having multiple victims. When offenders who were found to be dangerous on sentencing are considered separately from other convicted male child

sexual offenders, one in three of the former (32.3 per cent) and one in six (16.3 per cent) of the latter were known to have had a history of prior hospitalization for mental illness. The reasons listed for these prior hospitalizations included: alcoholism and/or drug addiction (12.2 per cent); deviant sexual behaviour (17.0 per cent); various psychoneurotic and personality disorders (56.1 per cent); and not reported (14.7 per cent). Overall, about half (49.5 per cent) of the 123 convicted offenders having been previously hospitalized had had a single admission, one in five (21.3 per cent) had been hospitalized twice, about one in nine (10.7 per cent) three times, and slightly less than one in five (18.5 per cent) four or more times.

**The Committee considers that the findings on the reported previous hospitalization for mental illness of persons subsequently convicted of sexual offences against children and youths have significant implications for penal policies concerning the assessment, provision of treatment and the types of facilities provided for these convicted offenders. Despite the absence of comprehensive documentation concerning the known prevalence of mental illness in the Canadian population, in the Committee's judgment, findings of this order are unlikely to occur by chance.**

## Mental Health Assessment

**One in three (33.4 per cent) convicted male child sexual offenders was reported to have been given a mental health assessment.** Since the provisions in the *Criminal Code* require that such assessments be made in relation to applications concerning convicted offenders who may be found dangerous by the court, it is not surprising that mental health assessments were reported to have been made for virtually all of these offenders (96.8 per cent). In the case of two offenders for whom this information was not reported, it is evident that the files concerning their assessments had been stored separately from the main correctional dossiers.

Of the remaining 633 convicted male child sexual offenders who were in custody or under supervision of federal and provincial correctional services, about one in four (27.2 per cent) was reported to have received a mental health assessment. The proportions receiving such assessments in relation to the types of offences committed were: 21.1 per cent, homosexual offenders; 28.7 per cent, heterosexual offenders; and 22.2 per cent, offenders having multiple victims. Information was either incomplete or unclear concerning the specialties of the health workers who had provided these assessments. The findings suggest, however, that such assessments had not been made exclusively by psychiatrists; in many instances, it appears that they had been provided by physicians trained in other branches of medicine, mental health specialists who were social workers or nurses, clinical psychologists, and in some instances, by classification officers.



# Provision of Mental Health Treatment

It is recalled that in the 1980 *Needs Assessment Survey* of 557 sexual offenders who were in custody of federal correctional institutions, about one in four (27.6 per cent) had received some form of counselling or treatment.<sup>58</sup> The proportion in this category is higher but of the same general order as that documented in the National Corrections Survey. In each of these surveys, the main finding is that most of these offenders were reported not to have received any mental health treatment while they were in custody.

**Table 39.2**

## **Provision of Mental Health Treatment for Convicted Male Child Sexual Offenders**

Sex of Victim of Current Conviction	Proportion of Offenders Reported to have Received Mental Health Treatment by their Previous Criminal Record							
	Prior Criminal Record of Offenders							
	None (n=262)		Sexual Offences (n=179)		Other Offences (n=254)		Total (n=695)	
	No.	Non- Accum. %	No.	Non- Accum. %	No.	Non- Accum. %	No.	Non- Accum. %
Male victims	5	10.2	19	37.3	3	10.3	27	20.9
Female victims	31	15.0	43	36.8	36	16.2	110	20.2
Multiple victims	2	28.6	2	18.2	1	33.3	5	23.8
<b>TOTAL</b>	<b>38</b>	<b>14.5</b>	<b>64</b>	<b>35.8</b>	<b>40</b>	<b>15.7</b>	<b>142</b>	<b>20.4</b>

*National Corrections Survey.* See Table 38.1 in Chapter 38, *Convicted Offenders*, for denominators used in calculating the proportions of offenders having received mental health treatment.

In the National Corrections Survey, one in five of the convicted male child sexual offenders (20.4 per cent) was reported to have received some type of mental health treatment. There was no variation in this regard in relation to the types of offences committed. However, there were sharp differences in relation to the offenders' prior criminal records. Among sexual recidivists, over one in three (35.8 per cent) had received some type of mental health treatment, while among non-sexual recidivists and first-time convicted offenders, the proportions respectively were one in six (15.7 per cent) and one in seven (14.5 per cent).

The type of care provided was listed for nine in 10 (90.1 per cent) of the offenders who were known to have received mental health treatment. About

three in five (57.8 per cent) had received some type of counselling and/or psychotherapy (individual or group). The other treatments provided included: training in life skills (11.7 per cent); services provided by Alcoholics Anonymous (11.2 per cent); behaviour modification, aversion therapy and drug therapy (11.7 per cent); and other procedures (7.6 per cent, sterilization, lobotomy, etc.).

Of the 142 offenders reported to have received mental health treatment:

1. Four in five (81.7 per cent) had received these services on only one occasion, while one in five (18.3 per cent) had been treated on two or more occasions.
2. Non-medically trained health workers had provided about a third of these services (32.3 per cent).
3. Two-thirds of the mental health treatment services (66.7 per cent) had been provided to the convicted child sexual offenders while they were in custody.

## Alcohol and Drugs

In the national surveys of police forces, hospitals and child protection services, alcohol and/or drugs were reported to have been used by suspected or known offenders in connection with about one in six offences (15.7 per cent) committed against boys and one in 10 offences (9.7 per cent) committed against girls. In contrast, **two in five male child sexual offenders (40.0 per cent) were reported to have been using one or other of these substances either before or when the sexual offences for which they were convicted had been committed.**

The reported use of these substances varied both in relation to the types of offences committed and the prior criminal records of the offenders. Approximately one in four offenders (27.9 per cent) who had committed a homosexual offence or who had had multiple victims (28.6 per cent) was reported to have been using alcohol or drugs. The proportion in this category was over two in five (43.3 per cent) in the case of convicted heterosexual offenders. The reported use of these substances also varied in relation to the offenders' previous criminal records, respectively: 29.5 per cent, no previous criminal record; 38.4 per cent, sexual recidivists; and 55.3 per cent, non-sexual recidivists.

These findings are about of the same order as those reported in other Canadian studies of convicted sexual offenders. In the 1974 Canadian Penitentiary Service Survey,<sup>59</sup> 32.9 per cent of the offenders were reported to have used these substances. In the 1977 survey of 150 sexual offenders incarcerated in Ontario, "65% of the pedophiles and 58% of the rapists either identified themselves, or were described by probation officers as problem drinkers or alcoholics."<sup>60</sup>

The sharp differences in the Committee's several national surveys in the reported use of alcohol and drugs by suspected or known offenders suggest that this type of information surfaces differently in different types of situations. It is unlikely, for instance, had the police, physicians or social workers known that these substances had been used by sexual offenders that they would have consistently under-reported this significant information. However, in the case of the higher proportion of convicted offenders that was reported to have used these substances, it is likely that some offenders either had chosen to volunteer this information as a face-saving rationalization to account for their actions, or they may have done so with the intent that statements about their impaired mental state would be considered as a mitigating factor on sentencing. This interpretation is partially supported by the finding that three in five offenders (58.6 per cent) claiming to use alcohol or drugs alleged that their judgment had been impaired by these substances when they had committed sexual offences against young persons.

## Case Studies

Drawn from the Committee's review of the case law, the following case studies illustrate the breadth of judicial discretion on sentencing in relation to considering an accused's prospects of benefitting from treatment while either on probation or while serving a custodial sentence. The case studies suggest that judicial attitudes differ considerably with respect to the perceived need of treatment for convicted child sexual offenders and in regard to the potential efficacy of these services.

### *Case Study 1: R. v. Henein (1980)*<sup>61</sup>

The accused, aged 36, pleaded guilty to five counts of gross indecency in which it was alleged that he had fellated five boys, aged 11 to 13. The incidents occurred over an 11 month period. The accused met the boys at a local restaurant, and returned to his apartment with them. Here, he had one of the boys photograph him in bed being fellated by another of the boys. The accused also took photographs of the boys fellating each other. Threats and violence were not used. Investigating police officers found 60 photographs of nude young boys on the accused's premises, as well as notebooks dating back to 1968 which contained the names of young boys, and newspaper clippings concerning sex offence charges involving men and boys. The police also seized large numbers of pornographic books and magazines including examples of child pornography. The accused admitted having been involved in homosexual pedophilic activities for over 10 years.

After his arrest, the accused received psychiatric help in the form of behaviour modification treatment. A psychiatrist testifying at trial indicated that the accused had a fair chance of being rehabilitated because he now felt a sense of remorse and was highly motivated by the court process. The psychiatrist proposed a treatment program to last three years. The trial judge imposed a suspended sentence with three years' probation, contingent upon the accused undergoing the treatment program. The Crown appealed against sentence.

The court allowed the appeal and varied the sentence to six months' imprisonment with three years' probation on the terms imposed by the trial



judge. After canvassing a number of decisions involving pedophilic offenders, the court expressed its disagreement with the idea that a suspended sentence and long probationary period:

... is inevitably right for these cases and that the abhorrence of the public itself must always be disregarded in the interests of the accused, because ultimately, the interests of the accused in his rehabilitation and that of the public coincide... Parliament has shown by the sentence it has established for these offences the seriousness with which it views them. Society has, through Parliament, repudiated these acts by criminal sanction and whether society can repudiate immoral acts by means other than criminal sanctions is irrelevant to these offences.

The court also noted that the accused's sense of remorse and his motivation to undergo treatment only manifested themselves after he had been charged. Thus, the court further held that it:

... should not become accepted wisdom that it is only upon being arrested and charged that remorse needs to be shown and the necessary motivation given to seek treatment. In my view, there is an element of deterrence if those who are aware of their problem and know that their conduct is unlawful are made aware that, if they are detected and convicted, they do not automatically escape incarceration for their criminal acts by, upon detection, expressing remorse and seeking treatment.

In imposing sentence, the court emphasized the need of the criminal justice system to protect children. It was also pointed out that the long period of time during which the accused had been involved with homosexual pedophilia and his refusal to accept certain types of treatment (psychoanalysis and drug treatments) were aggravating factors in his case.

*Case Study 2: R. v. B. (1981)*<sup>62</sup>

The accused, aged 35, indecently assaulted his five year-old daughter on several occasions, engaging her in acts of cunnilingus and fellatio, and maintaining her silence by means of threats. The accused was dull-witted and "had certain personality defects". At trial, the accused was fined \$300.00 and placed on probation for three years. On appeal, the court varied the sentence to nine months' imprisonment plus three years' probation. The court stated that it would have been more severe in sentencing but for the accused's low intelligence, personality defects and progress toward rehabilitation since being sentenced.

*Case Study 3: R. v. Robertson (1979)*<sup>63</sup>

The accused, a 28 year-old male, was a scoutmaster. Robertson took five members of his troupe on a camp-out, and on the first night of the expedition, fellated two of the boys in his tent; these acts gave rise to two charges of gross indecency. On the second night, the accused committed sexual acts upon a third scout for which he was charged with indecent assault on a male. The victims ranged from 11 to 13 years of age.

At trial the accused pleaded guilty and was sentenced to eight months' imprisonment and two years' probation. The accused appealed against sentence.

In allowing the appeal, the majority of the court noted that the Crown counsel at trial had not requested a term of imprisonment but rather had recommended a suspended sentence and a period of probation. The accused was aware of his pedophilic tendencies and had undergone psychiatric treatment for one and one half years. The majority held that the accused's public disgrace was a sufficient specific deterrent and adequately expressed society's

revulsion by the crimes committed; a prison term could not increase the effectiveness of the deterrent. The majority were also influenced by the accused's positive pre-sentence and medical reports, which presented the accused's rehabilitation as a distinct possibility, if proper treatment were received. The majority stated that public protection could best be served by the accused's receiving psychiatric help and, accordingly, varied the sentence to time served (10 days) plus two years' probation conditional upon the accused's seeking treatment.

Howland C.J.O., in dissent, stated that a custodial sentence was appropriate in this case as reflection of public abhorrence of the accused's conduct and of the gravity of the offence. Howland C.J.O. also emphasized the accused's breach of a position of trust as an aggravating factor in the case. In the result, the Chief Justice would not have disturbed the sentence imposed by the trial judge.

#### *Case Study 4: R. v. Campbell (1978)*<sup>64</sup>

The accused, aged 30, abducted the 13 year-old complainant and her younger brother, after entering their home where the girl and boy had been left together. Shortly after midnight, the complainant and her brother were driven to a secluded place, and the boy was instructed to lie down on the back seat of the car. Thereupon, the accused removed the girl's clothing by force, raped her and forced her to fellate him.

The accused had no prior criminal record. Evidence indicated that he may have been severely alcoholic and mentally disturbed. The trial judge expressed reservations that a sexual offender imprisoned in a federal penitentiary might suffer physical harm there and be even more dangerous upon being released. Accordingly, the trial judge imposed a 23 month sentence to be served in a provincial correctional centre.

On appeal by the Crown, the Court of Appeal increased the sentence to five years, holding that it was not for the judge in sentencing to consider the harm that the offender might suffer in a federal prison; such matters were the concern of the penitentiary services and of Parliament. In varying sentence, the Court sought to:

... express society's detestation of the offence, protect society from such a man, punish him, and deter him and others from committing such offences.

#### *Case Study 5: R. v. Doran*<sup>65</sup>

The 28 year-old accused was described as a competent and dedicated school teacher. He was convicted of indecently assaulting two young girls. Prior to committing the offences, the accused had voluntarily begun receiving psychiatric treatment for his pedophilic tendencies. The trial judge imposed a sentence of 12 months' definite and six months' indeterminate on each charge, to be served concurrently. On appeal, the court was presented with evidence not previously available for perusal by the trial judge concerning the accused's good prospects for rehabilitation. The sentence was varied to time served and two years' probation, with the condition that the accused continue his treatment. In varying sentence, the court considered both the punishment already received by the accused in losing his successful teaching position and the need to deter pedophilic behaviour. As Gale C.J.O. stated:

Deterrence in this case is of small moment because the Court is of the view that the appellant suffers from an illness, as do all

pedophiles; they are not deterred by punishment to others. If the appellant is allowed out of custody, undertakes the treatment and repeats this sort of offence, then he should expect to be dealt with in a quite different way because it will then be demonstrated that the public welfare would best be served by isolating him from society.

*Case Study 6: R. v. Priest (1974)*<sup>66</sup>

The accused was convicted of the attempted rape of a two year-old girl. The accused, who apparently was epileptic, alcoholic and illiterate, was babysitting the victim when he committed the offence. The accused claimed that, prior to performing the acts for which he was indicted, he had been drinking, had struck his head twice and could remember little of the incident. The accused had very limited intelligence, and was described as a "village idiot" type and as a "quiet drunk".

At trial, a three year sentence was imposed. The Crown appealed against sentence. The Court of Appeal ruled that in spite of the gravity of the offence, which necessitated a substantial prison term as a general deterrent, the accused was considered to be harmless and dull-witted, and had no prior history indicating a predisposition toward violent or sexually assaultive behaviour. It was also felt that the accused was unlikely to derive much benefit from imprisonment. Furthermore, although the victim was young, she had suffered no serious physical or psychological harm as a result of the offence. The court dismissed the Crown's appeal and upheld the sentence.

*Case Study 7: R. v. A.B.*<sup>67</sup>

The accused was charged with two counts of having sexual intercourse with a female under the age of 14 years and with five counts of indecent assault on a female. The complainants included A.B.'s daughter, E.B., whose custody he had retained after his divorce, and who testified that, at the age of six, her father had made her fellate him, and that he had attempted to have anal intercourse with her about a year later. The child was subjected to acts of anal intercourse from the time she was eight years-old until she was 13. A.B. began having vaginal intercourse with his daughter two months after her first menstrual period. Throughout the course of her childhood, the girl was induced by her father to participate in a variety of other sexual acts. The incidents of sexual abuse became regular occurrences when the child reached nine years of age. E.B. estimated that she had been involved in between 250 and 500 sexual acts with her father over a seven year period.

At A.B.'s trial, E.B. explained her feelings about her father:

I didn't know really what it was until a couple of years ago and then I didn't like it and didn't want to do it as often and that caused conflict between us.

I loved him and I cared for him.

I was frightened of him because he got mad easy . . . he'd yell and he'd hit me sometimes.

When I was hit, I'd go and run away.

The child also testified that, "My dad told me that I shouldn't be having sex with boys."

The accused also was sexually involved with at least five other teenaged girls, all of whom were friends of his daughter. Evidence adduced at trial



showed that A.B. had used his daughter to “recruit” these girls to be her father’s sexual partners. With A.B.’s encouragement, E.B. invited her friends to visit or sleep over, and on these occasions, A.B. would make sexual advances toward them (usually with E.B.’s assistance). These advances led to fondling, kissing, fellatio, attempted vaginal penetration, and in the case of one complainant, full vaginal intercourse on two occasions. During the second of these two incidents, “E. held the hand of a frightened prostrate little girl while B. succeeded in defiling her and achieving an orgasm.” The complainants ranged in age from 10 to 13 years at the times of the events alleged in the indictment.

A.B. pleaded not guilty at trial, but was convicted on all counts. In pronouncing sentence, the trial judge first considered psychiatric evidence introduced during the trial, which indicated that A.B. was a heterosexual pedophile who represented:

... a poor candidate for treatment and should be viewed as being at risk of getting in further trouble if returned to the community.

The judge added that:

... if this Accused Person, now deprived of his daughter bait to ensnare his virginal victims, is returned to the community still driven by his pedophile illness, a terrible tragedy might occur.

After canvassing a number of relevant recent sentencing decisions, the judge noted that the function of the criminal sanction is not only rehabilitative and deterrent, but also denunciatory. The judge went on to cite *R. v. Pruner* (1979)<sup>68</sup> as authority for the principle that “the maximum penalty should be reserved for the worst offence and the worst offenders.” He concluded that A.B.’s crimes against his daughter were almost the worst examples of the offence of indecent assault that could be imagined.

The judge sentenced A.B. to life imprisonment on the count of having sexual intercourse with a female under the age of 14 (his daughter), to concurrent sentences of one, one, one, two and four years’ imprisonment with respect to the charges of indecent assault on a female, and to a concurrent term of two years’ imprisonment in connection with the other charge of having sexual intercourse with a female under age 14. The judge stated:

... I am not prepared to countenance [A.B.’s] release into society until there is some reasonable degree of assurance that his illness is, if not cured, at least curbed.

Thus, the judge added to his decision a recommendation that the Parole Board be satisfied by medical evidence that A.B. had become capable of controlling his pedophilia before allowing him to be released on parole.

#### *Case Study 8: Young v. R.*<sup>69</sup>

The accused was charged with three counts of buggery and one count of indecent assault on a male. The incidents occurred on three separate days, and involved four boys aged 6, 8, 8 1/2 and 10; the indecent assault charge was laid with respect to the youngest boy. The accused also forced each of the victims to fellate him and to perform various other sexual acts. The boys suffered minor injuries, such as rectal bruising. At trial, the accused pleaded guilty to all counts, and received a four year sentence on one count of buggery, two years and one year, consecutive, for the other buggery counts, and two years, concurrent, on the indecent assault charge.

The prisoner appealed against sentence, arguing that a total of seven years' imprisonment was excessive, and that given his need for treatment, a total prison term of four years with three years' probation would be more appropriate. The Court of Appeal dismissed the appeal, holding that the requirements of specific and general deterrence, and the necessity of promoting the accused's rehabilitation, made the sentence a fitting one. The accused's "cruel homosexual rapes" were crimes that called for a deterrent sentence. The accused's rehabilitation might be advanced if he were transferred to a regional psychiatric facility for a program of treatment which would be completed just before he became eligible for parole.

*Case Study 9: R. v. Adamson (1981)*<sup>70</sup>

The accused, a 22 year-old male, exposed his genitals to two young girls, as they walked to school. Next, the accused forced a nine year-old boy into his car. He was charged with forcible confinement (which carries a maximum sentence of five years' imprisonment), pleaded guilty, and was sentenced to 15 months' imprisonment. The trial judge stated that the seriousness of the offence was such as to necessitate a custodial sentence, even though the accused had no prior criminal record and presented an excellent prospect for rehabilitation. The accused appealed against sentence.

The court allowed the appeal, taking note of the fact that the accused had sought psychiatric help, that he was likely to benefit from treatment, that he had abstained from alcohol and drugs after being arrested, and that psychiatric reports indicated that he posed no danger to the public. Notice was also taken of the accused's record of steady employment. In the result, the sentence was reduced to nine months' imprisonment to be followed by a two year probationary period.

*Case Study 10: R. v. Beaudoin*<sup>71</sup>

The accused, aged 37, was a married man and a school teacher. He pleaded guilty to one count of sexual intercourse with a female under age 14 and to two counts of sexual intercourse with a female between the ages of 14 and 16. The offences were carefully planned and involved taking polaroid photographs of the complainants. The court held that in view of his profession, the accused was guilty of a breach of trust. Mitigating factors cited by the judge included the fact that the accused had recognized that he had a problem, had sought marriage therapy, and was a good prospect for rehabilitation. The accused received a sentence of two years less a day for the offence with the youngest girl, and sentences of one year concurrent with respect to the offences against each of the two older girls. The prison terms were to be followed by two years' probation conditional upon the accused's receiving medical treatment, avoiding communication with the victims, and refraining from contact with educational and youth organizations.

## Evaluation of Efficacy

Special treatment programs for convicted sexual offenders have been mounted at a number of correctional facilities across Canada.<sup>72-75</sup> On the basis of published accounts, it appears that the main elements of these special treatment programs consist of:

1. Individual and group counselling, and/or psychotherapy.

2. Behaviour modification and therapy.
3. Various procedures involving training in life skills.

Prior to being treated, convicted sexual offenders may be assessed by means of various psychometric tests, including:

- Social Expression Scale.
- Social Sexual Anxiety Inventory.
- Sex Knowledge Questionnaire.
- Buss-Durkee (anger inventory).
- TAIS (Test of Attentional and Interpersonal Styles).
- Social Self-Esteem and Sexual Attitude questionnaires.

In addition, physiological testing may include showing an inmate a series of photographic slides of deviant sexual behaviour while simultaneously measuring the circumference of his penis by means of a plethysmograph. This procedure is used to determine whether the diameter of an inmate's penis varies with different types of sexual depictions.

While counselling and/or psychotherapy may be provided for individual patients, the more common practice is to schedule group sessions in which a number of transactional and role-playing procedures are used. These techniques may include: Hot-Seat; Empty-Chair; Going-Around; Saying Good-bye; Dealing with Authority; Control of Temper; the Viewpoint of the Victim; Meeting Appropriate Sexual Companions; and Normal Approach Skills.<sup>76</sup>

Where behaviour modification approaches are used, the techniques employed may include:

*Orgastic re-conditioning* (a convicted offender is instructed to think of a fantasy while he is masturbating himself prior to ejaculation).

*Aversive therapy* (an electric shock applied by the inmate while viewing photographic slides of inappropriate sexual themes).

*Covert sensitization* (associating a disgusting fantasy with a deviant sexual fantasy).

*Satiation* (repeating or boring fantasies to death).

*Thought stopping* (an inmate snaps an elastic band on his wrist whenever he realizes he is drifting into a fantasy concerning inappropriate sexual behaviour).

The special treatment programs for sexual offenders may also provide sessions focussing upon: assertiveness training; relaxation training; and sex education. These programs are intended to improve the skills, knowledge and attitudes of convicted sexual offenders.

Partly on the basis of his previously undertaken extensive research on sexual offences and also in relation to the findings of a study of intensive group



psychotherapy provided for a dozen sexual offenders in custody at the British Columbia Regional Psychiatric Centre at Abbotsford, D.J. West of the University of Cambridge's Department of Criminal Science has noted that:

"No system has succeeded fully in reconciling the needs of treatment with those of justice and security. Justice demands fixed terms of detention as a punishment for past crimes. Penal authorities are charged with a responsibility to protect the public from criminals for the duration of their sentence. They cannot risk relaxation of security, or permit trial periods of freedom, for offenders whose criminal history suggests that they are potentially dangerous. The medical treatment model, on the other hand, calls for some flexibility in the time spent in custody according to the offender's progress towards emotional reorientation. Even more important, a realistic treatment programme concentrates on readjustment to the community rather than adjustment to artificial institutional life. The most critical phase of treatment starts when the offender begins to face life outside once again. That moment is the testing time for treatment gains made during incarceration. It is also the moment when emotional conflicts are liable to be reawakened and help is most needed and most likely to be effective. In concrete, practical terms, the psychiatric approach calls for release by easy stages while the offender is still under supervision and still an active participant in a treatment programme. Without this essential provision, treatment schemes are not being given a fair chance and should not be blamed if they fail to prevent recidivism."<sup>77</sup>

With respect to conclusions about the efficacy of special treatment programs, several Canadian studies <sup>78-80</sup> have variously claimed that the provision of these services has had "a demonstrable beneficial effect on the re-offence rate of incarcerated sex offenders,"<sup>81</sup> or alternately, they may have been referred to as having been "an established, demonstrably effective treatment program."<sup>82</sup>

The consensus of numerous reviews of the operation of correctional treatment programs for convicted sexual offenders suggests that there is insufficient evidence available either to warrant the conclusion "that nothing works" or the optimism that certain programs have been "demonstrably successful." On the basis of his extensive review of treatment programs provided for child sexual molesters, V.L. Quinsey concluded that:

"A more serious difficulty with the treatment programs [described above] is that they do not appear to be based upon a detailed analysis of the individual client's problems. There have been few attempts at designing different treatment interventions for different types of child molesters, particularly as the problems extend to actual sexual behaviours with adult partners in the community. The typical strategy employed in the literature is to obtain a group of more or less similar sex offenders, make a treatment intervention designed to suppress child molesting, evaluate what happens (with measures that vary widely in reliability and relevance over studies) and compare the results obtained with a subjective estimate of what would have occurred without therapy. This strategy poses some rather difficult problems in evaluation. In addition, it does not appear to be the most effective strategy on theoretical grounds."<sup>83</sup>

On the basis of their more general review of the efficacy of correctional treatment programs in Canada and abroad, P. Gendreau and R.R. Ross reached a similar conclusion.

"The criminological literature is replete with reports attesting to the view that correctional treatment is a failure . . . Conflicting views have been expressed . . . and while the debate still rages, there appears to be a widespread endorsement of the view that in correctional rehabilitation "nothing works."<sup>84</sup>

The task of testing one's views by seeking and critically evaluating new evidence — what we have naively assumed to be the forte of research — seems to have been studiously avoided by both sides in their struggle to upstage their opponents . . .<sup>85</sup>

The arguments are persuasive, the rhetoric often brilliant, the metaphors appealing, and the objectivity sadly lacking. The antagonists seem to be more intent on winning arguments than on seeking truths."<sup>86</sup>

Stemming from their intensive review of the special treatment program for convicted sexual offenders at the Regional Psychiatric Centre at Abbotsford, British Columbia, D.J. West and his colleagues concluded that:

"There are three main reasons to justify scepticism about the value of the group treatment programme in British Columbia: absence of firm evidence that the attainment of insight into motives for sexual aggression will prevent recurrence, lack of any means for testing behaviour beyond the confines of the institution, and the barriers to frank communication and assessment within a penal setting. These grounds for scepticism would not amount to much if it could be proved by a follow-up study that the programme really achieved the prevention of further crimes after release."<sup>87</sup>

Treating only those with good prospects guarantees impressive results. To prove the effectiveness of treatment, like must be compared with like, treated cases must be compared with others, assessed as equally eligible for inclusion, who did not receive treatment.<sup>88</sup>

In the present state of the art, a treatment effort such as the one described is largely an act of faith. The therapists believe in it, superficial indications suggest that it helps and, though it can be painful at times, the patients want it, but the security of scientific proof of effectiveness is missing. However, in human affairs, especially in matters of social policy, many decisions have to be taken without benefit of rigorous scientific testing. Having observed the work at close quarters, weighed the pros and cons as critically as possible, using common sense and intuition where scientific assessment is not available, we reached a personal conviction that important and relevant changes in attitude were being made by these patients. There were some men in the group whose improvement was so plainly evident to all observers that we should have gladly recommended their release under continued psychiatric supervision had that course been open, despite a lively appreciation — and some practical experience — of the difficulties and responsibilities of making recommendations for parole. But clearly, no effort should be spared, in spite of all the methodological problems, to secure more objective evidence of effectiveness."<sup>89</sup>

These assessments indicate that in the present state of knowledge, no definitive conclusions can be reached concerning the known or potential efficacy of correctional treatment programs for convicted sexual offenders. While, as noted, a number of special treatment programs are now being provided at several correctional institutions across Canada, it is apparent that despite these efforts relatively little attention has been paid to seeking to



**ascertain the needs of a majority of these offenders or to provide reasonably full information about the types of services provided for them.**

During its meetings with senior federal and provincial correctional administrators across Canada, the Committee was informed of several reasons why these officials believed that limited information was available about these issues. Their reasons included:

1. Reflecting the deeply rooted repugnance for and rejection of sexual offenders by Canadians, it was suggested that these views were reflected in the administration of correctional services, and accordingly, assistance for these offenders was assigned a low priority.
2. It was also held that most of these offenders did not need treatment. They were considered to be criminally deviant and hence deserved to be severely sentenced by the courts and to be the recipients of harsh punishment meted out by other imprisoned inmates.
3. The Committee was informed that statistics were an academic artifact, one that made no practical contribution in relation to assessing the widely different needs of individual offenders, or in providing assistance in the process of reaching critical decisions concerning the types of custody in which these offenders should be incarcerated or the timing and conditions of their parole. Since these decisions had to be made on a case-by-case basis, it was suggested to the Committee that statistics could not replace the need for drawing upon experienced and sound judgment.

The Committee rejects this latter premise. As documented elsewhere in the Report, where it was found that clearly set standards had not been established and the actions taken with respect to them monitored, then the decisions based upon informal assessments were found in a number of instances to have resulted in gross errors of judgment having been made. In this regard, one senior correctional administrator informed the Committee that maintaining a deliberate but informal policy of benign silence was preferable to unleashing a Pandora's box of public concern. Such assessments, it was feared by this informed observer, would reveal the glaring inadequacies of the treatment and rehabilitative services provided for offenders as well as indicating the absence of firm documentation concerning the follow-up of discharged prisoners who either had received no services or different types of assistance while in custody or under supervision.

To the extent that these observations are valid, the absence of complete and externally reviewed documentation concerning the operation of correctional services provides a convenient protective shield serving to deflect independent scrutiny and potential criticism concerning decisions reached about the assessment of the needs, the provision of treatment services, and the release and parole conditions set for convicted child sexual offenders. By choosing not to assemble this type of information or to make it openly available, it can be validly claimed that answers to these questions are unknown.



4. The Committee was told by another senior correctional administrator that once convicted sexual offenders were "out of sight", they were "largely forgotten by the public." It was only when these prisoners were placed on parole or released that the public's concerns were aroused by fears that these offenders might commit further sexual offences.

This senior official also noted that since the legislative leadership provided was typically weak and poorly informed, correctional services operated with a relatively high level of self-autonomy. This fact, coupled with the lack of sufficient documentation about the operation of these services, effectively precluded these rapidly rotating legislators from delving too deeply into the details of the administration of specific correctional programs, or of being in their positions long enough to have the opportunity of identifying and re-aligning program priorities.

It was further noted that there was often a high turnover of legislators who were assigned responsibility for correctional services. In this regard, there was a lack of continuity in establishing penal policies. Accordingly, in practice, most important penal policies were developed and implemented by senior career correctional officials.

**Whether the views expressed by senior correctional officials are valid or invalid, none of these reasons in the Committee's judgment constitutes acceptable justification for the fact that there is now wholly inadequate information available about the important issues being considered.**

It is the stated policy of some correctional services to separate medical records from those maintained for administrative purposes. Where this policy is adhered to, the main correctional dossier for each offender would either contain no record of medical care, or it would only be noted in these files that such services had been provided but with no details being listed. On the basis of the survey's findings, it is unclear even where policies concerning the confidentiality of medical information were reported to have been adopted whether they were being fully adhered to in practice. In all jurisdictions participating in the National Corrections Survey (federal or provincial correctional services), it was found that relatively extensive information on clinical assessments and treatments was available for some offenders, but not for others. As a result, it is unknown where such information was not reported whether the offenders involved had not received these services, or whether they had, but the information had been separately recorded in medical charts.

**In light of the findings of several other surveys of convicted sexual offenders in Canada, the likelihood is greater where no information was reported in the present survey concerning the provision of mental health assessments and treatments that in fact no such services had been given or received.** This conclusion is supported by the findings of the 1980 *Needs Assessment Survey* conducted by Correctional Services Canada in which it was found that only 27.6 per cent of 557 sexual offenders in federal custody had received any form of treatment.<sup>90</sup> Two smaller studies reached somewhat similar conclusions.

In a survey of 150 convicted sexual offenders in federal custody in Ontario undertaken in the late 1970s, it was reported that:

“More than half of both groups (51% of the pedophiles and 58% of the rapists) are viewed by institutional staff as poorly motivated toward rehabilitation, with only 17% of the pedophiles, and 10% of the rapists, being described as well-motivated. These figures are reflected in the number of sexual offenders who accept treatment for their deviant behaviour. An established, demonstrably effective treatment program . . . has been operating in the Region for three years, and yet in that time less than 80 of the over 300 sexual offenders that have been in the system, have volunteered for treatment. Furthermore, many of these did so in order to enhance their parole chances, rather than because they recognized they had a problem that could benefit from treatment.”<sup>91</sup>

Comparable observations were made in the study of 205 sexual offenders who were incarcerated in federal institutions in western Canada.

“According to case management officers, 67% of the sample decidedly required treatment for sexual deviations . . . [however] . . . less than 65% of the sample would even admit to their offence or claim the capacity to recall it . . . 39% outrightly refused to do so . . . In addition, most subjects (70%) were not interested in participating in treatment programs in their current penitentiary setting. As expected, fewer would be disinclined to participate in a hospital (57%) or pre-release setting (54%), or if participation would aid in release (51%). Although this variation in treatment resistance may be indicative of questionable motivation, it could also reflect the reality of prison environment and the pressures experienced by identified sexual offenders.”<sup>92</sup>

The Committee's findings on convicted child sexual offenders were obtained in relation to persons who were in custody and under supervision of both federal and provincial correctional services. As a result, these offenders were incarcerated in a sizeable number of institutions, many of which did not provide special treatment programs for sexual offenders. In light of these considerations, the Committee's findings that about one in five convicted male child sexual offenders (20.4 per cent) had received some form of mental health treatment are of the same general order, if somewhat lower, than the findings of the three other Canadian studies reporting the provision of these services. The proportions in these surveys were: 27.6 per cent, 1980 *Needs Assessment Survey*; 26.7 per cent, 1977 Ontario Survey; and 30.0 per cent of offenders willing to receive treatment, 1982 Prairie Region Survey.

## Summary

Despite the limitations of the Committee's findings, they clearly indicate the need, as recommended by earlier national inquiries, for the careful and comprehensive documentation of the social, physical and mental health needs of these offenders, the nature of the services provided for them, under what conditions these services are provided, and the assessment of the outcomes of treatment. The Committee's conclusions and recommendations with respect to these issues are identical to those of earlier inquiries undertaken during a period spanning well over half a century.



The 1938 *Royal Commission to Investigate the Penal System of Canada* (Archambault Report) concluded "that a prison system that on the whole, returns prisoners to society worse than when received into its custody fails in its function to protect society."<sup>93</sup> The 1938 *Archambault Report* recommended that:

"Nothing should be omitted which might improve the character of the prisoner. Thorough mental and medical examinations, complemented by a knowledge of his personal history, background, and family history, should be made of every prisoner by an expert psychiatrist and physician. Proper treatment should follow in an effort to remove the causes of his criminal tendencies."<sup>94</sup>

About two decades later, the 1956 *Committee Appointed to Inquire into the Principles and Procedures followed in the Remission Service of the Department of Justice of Canada* (Fauteux Report) noted that "the problem of the sex offender . . . is primarily a medical problem."<sup>95</sup> While the 1956 *Fauteux Report* observed that "medical science is still uncertain as to the kind of treatment that may be effective," it concluded that "it is obvious that effective treatment can only be discovered if such persons are made the subjects of special study."<sup>96</sup>

This theme was strongly reiterated in the Report of the 1958 *Royal Commission on the Criminal Law relating to Criminal Sexual Psychopaths* (McRuer Report). The 1958 Royal Commission stated that:

"We believe there is great necessity for concentration on ways and means of clinical study and experiment to arrest the development of sexual deviation. The responsibility for this extends far beyond the jurisdiction of the courts, and even of the legislative bodies . . ."<sup>97</sup>

In addition to this, an organized scientific study of the cases of all those committed to serve indeterminate sentences should be undertaken, and if possible, extended to all sexual offenders serving sentences in penitentiaries, with a view to developing improved methods of treatment of those committed to prison, whether for an indeterminate or determinate period."<sup>98</sup>

The Committee strongly endorses the recommendations of the 1938 *Archambault Committee*, the 1956 *Fauteux Report* and the 1958 *McRuer Report*. We believe that another half century should not be allowed to elapse before strong and constructive action is taken in order to assemble obtainable information about the needs and treatment of convicted sexual offenders, including those whose victims were children and youths.

It is evident that, for whatever reasons, correctional services have shown little enthusiasm or disposition to act upon the recommendations of a series of government appointed inquiries in relation to the need to obtain comprehensive and adequate documentation concerning the needs of convicted sexual offenders and the treatment services provided for them. It is evident that if this job is to be done, it must be given a strong legislative mandate and authority must be clearly assigned to assure that the requisite full documentation is undertaken and independently reviewed. There can be no doubt that in relation



to child sexual abuse, the lack of adequate, yet obtainable documentation, has meant that there is virtually no reliable information available concerning how children and youths may be better protected from convicted sexual offenders, particularly those who are recidivists.

Accordingly, the Committee recommends that:

The Office of the Commissioner in conjunction with the Department of Justice, the Department of National Health and Welfare, the Department of the Solicitor General and with the co-operation and participation of Provincial and Territorial Correctional Services, undertake a national research study focussing on the needs and treatment of convicted child sexual offenders. This study should include an assessment of the social, physical and mental health needs of these offenders and of all aspects of the treatment provided for them and the various outcomes.

## References

### Chapter 39: Treatment

- <sup>1</sup> Canada. Department of the Solicitor General. *The General Program for the Development of Psychiatric Services in Federal Correctional Services in Canada*. Ottawa, 1972, pp. 5-7.
- <sup>2</sup> Canada. *First Annual Report of the Directors of Penitentiaries of the Dominion of Canada for the year 1868*, Ottawa: I.B. Taylor, 1870, p. 37.
- <sup>3</sup> Canada. *Report of the Minister of Justice as to Penitentiaries in Canada for the year ended 30th June 1884*. Ottawa: Maclean, Roger and Co., 1884, p. 19.
- <sup>4</sup> *Supra*, at note 1, pp. 9-10.
- <sup>5</sup> Canada. *Report of the Royal Commission to Investigate the Penal System of Canada*, Ottawa: King's Printer, 1938, p. 151.
- <sup>6</sup> *Ibid.*, p. 151.
- <sup>7</sup> *Ibid.*, p. 158.
- <sup>8</sup> *Ibid.*, p. 120.
- <sup>9</sup> *Ibid.*, p. 355.
- <sup>10</sup> Tuchtie, M.D., Forensic In-Patient Service, *The Criminal Law Quarterly*, 3: 448, 1961.
- <sup>11</sup> Turner, R.E., The Forensic Clinic, Toronto, *The Criminal Law Quarterly*, 2: 439, 1960.
- <sup>12</sup> Canada. Department of Justice. *Report of a Committee Appointed to Inquire into the Principles and Procedures followed in the Remission Service of the Department of Justice of Canada*. Ottawa: Queen's Printer, 1956, p. 89.
- <sup>13</sup> *Ibid.*, p. 48.
- <sup>14</sup> Canada. *Report of the Royal Commission on the Criminal Law Relating to Criminal Sexual Psychopaths*. Ottawa: Queen's Printer, 1958, p. 129.
- <sup>15</sup> *Ibid.*, p. 83.
- <sup>16</sup> *Ibid.*, p. 84.
- <sup>17</sup> Canada. Department of the Solicitor General. *Report of the Canadian Committee on Corrections*. Ottawa: Queen's Printer, 1969, p. 263.
- <sup>18</sup> *Ibid.*, p. 264.
- <sup>19</sup> The references cited in Notes 20-37 are not inclusive but representative of the Canadian studies completed during this period. Several of the researchers wrote numerous papers reiterating similar matter. Some of these studies are cited elsewhere in the Committee's Report.
- <sup>20</sup> Garneau, J., *Treatment in Canadian Penitentiaries*. Address given to Annual Meeting of the John Howard Society of Kingston, 1961.
- <sup>21</sup> Gray, K.G., The Sex Offender: Psychiatric Services for the Courts, *Criminal Law Quarterly*, 3: 433-47, 1961.
- <sup>22</sup> Hartman, V.L., Some Observations of Group Psychotherapy with Paedophiles, *Canadian Journal of Criminology and Corrections*, 3: 492-99, 1961.
- <sup>23</sup> Turner, R.E., Treatment of the Sex Offender, *Criminal Law Quarterly*, 3: 485-91, 1961.
- <sup>24</sup> Dantzie, A.S., Forensic Clinic for Sex Offenders, *Ontario Medical Review*, 30: 590-91, 1963.
- <sup>25</sup> McKnight, C.K., Male Patients Transferred from Reform and Penal Settings in Ontario to Mental Hospitals, *Canadian Journal of Criminology and Corrections*, 5: 262-70, 1963.
- <sup>26</sup> Stokes, R.E. and R.E. Turner, *The Dangerous Patient-Offender*, Paper given at Fourth Research Conference on Delinquency and Criminology, Montreal, 1964.
- <sup>27</sup> Swadron, B.B., *Detention of the Mentally Disordered, Including the Applicable Criminal Law*, Toronto: Butterworths and Co. (Ltd.), 1964.

- <sup>28</sup> Turner, R.E., Psychiatric Consideration for Remand and Diagnostic Centres, *Canadian Journal of Criminology and Corrections*, 6: 474-76, 1964.
- <sup>29</sup> Turner, R.E., The Sexual Offender, *Canadian Psychiatric Association Journal*, 9: 533-40, 1964.
- <sup>30</sup> Grosman, B.A., The Treatment of Habitual Criminals in Canada, *Criminal Law Quarterly*, 9: 95-104, 1966.
- <sup>31</sup> Steffy, R.A., Progress Report on the Treatment of the Pedophile Sex Offender, Paper given at Alexander G. Brown Memorial Clinic, Fourth Annual Conference, Toronto, 1967.
- <sup>32</sup> Price, R.R., Mentally Disordered and Dangerous Persons under the Criminal Law: Comments on the Report of the Canadian Committee on Corrections, *Canadian Journal of Criminology and Corrections*, 12: 141-64, 1970.
- <sup>33</sup> Price, R.R., Psychiatry, Criminal Law Reform and the Mythophilic Impulse: On Canadian Proposals for the Control of the Dangerous Offender, *Ottawa Law Journal*, 4: 29-34, 1970.
- <sup>34</sup> Steffy, R.A. and R.E. Gauthier, *Assessment and Aversion Conditioning Treatment with Pedophile Sex Offenders: A Contrast of Success and Failure Patients*. Paper given at Annual Psychological Association Conference, Kingston, 1970.
- <sup>35</sup> Marcus, A.M. and C. Conway, A Canadian Study of Dangerous Sexual Offenders, *International Journal of Offender Therapy*, 15: 59-66, 1971.
- <sup>36</sup> Mohr, J.W., Treatment of the Sex Offender: Evaluation of Treatment, *International Psychiatric Clinics*, 8: 227-42, 1971.
- <sup>37</sup> Desroches, F., Regional Psychiatric Centres: A Myopic View?, *Canadian Journal of Criminology and Corrections*, 15: 200-18, 1973.
- <sup>38</sup> Canada. Department of the Solicitor General. *The General Program for the Development of Psychiatric Services in Federal Correctional Services in Canada*. Ottawa: Information Canada, 1972, p. 34.
- <sup>39</sup> *Ibid.*, p. 35.
- <sup>40</sup> *Ibid.*, p. 35.
- <sup>41</sup> *Ibid.*, p. v.
- <sup>42</sup> Canada. Canadian Penitentiary Service. *First Report to the Commissioner of the Canadian Penitentiary Service* by the National Health Services Advisory Committee. Ottawa, 1974.
- <sup>43</sup> Canadian. Canadian Penitentiary Service. *The Provision of Medical and Health Care Services to Inmates in Federal Penitentiaries*. The Second Report of the National Health Services Advisory Committee to the Commissioner of Penitentiaries, Ottawa, 1976, p. 85.
- <sup>44</sup> *Ibid.*, p. 87.
- <sup>45</sup> *Ibid.*, p. 87.
- <sup>46</sup> Canada. Canadian Penitentiary Service. *Report of the Work Group appointed to Investigate and Report upon the Feasibility of Establishing a Pilot Project for the Treatment and Reintegration of Sexual Offenders into Society*. Ottawa: 1975, p. i.
- <sup>47</sup> *Ibid.*, p. 1.
- <sup>48</sup> Searle, C.A., *A Study of Sexual Offenders in Canada and a Proposal for Treatment*. Ottawa: Canadian Penitentiary Service, 1974.
- <sup>49</sup> *Supra*, see note 46, p. 2.
- <sup>50</sup> Canada. Canadian Penitentiary Service. *Inmate Programs Branch Position Paper on the Treatment of Sexual Offenders*. Ottawa, 1977.
- <sup>51</sup> Canada. Correctional Service Canada. *Sex Offenders*. Ottawa, 1980 (mimeo).
- <sup>52</sup> Canada. Correctional Service Canada. *The Current Status of Treatment Programs for Sex Offenders*. Ottawa, 1980 (mimeo).
- <sup>53</sup> *Supra*, at note 51, p. 3.
- <sup>54</sup> *Supra*, at note 52.
- <sup>55</sup> Atcheson, J.D., Social Aspects of Sexual Behaviour, *Criminal Law Quarterly*, 13: 455-61, 1961.
- <sup>56</sup> Roy, C. and A. Saad, *The Treatment of Sexual Offenders within the Canadian Penitentiary System: A New Initiative*. Abbotsford: Regional Medical Centre, Canadian Penitentiary Service, 1975 (mimeo), p. 11.
- <sup>57</sup> *Ibid.*, pp. 47-8.
- <sup>58</sup> *Supra*, at note 52.



- <sup>59</sup> *Supra*, at note 48.
- <sup>60</sup> Christie, M.M., W.L. Marshall and R.D. Lanthier, *A Descriptive Study of Incarcerated Rapists and Pedophiles*. Kingston: Canadian Penitentiary Service (mimeo) 1977, p. 16.
- <sup>61</sup> *R. v. Henein* (1980), 53 C.C.C. 257 (Ont. C.A.).
- <sup>62</sup> *R. v. B.*, unreported, March 30, 1981, (Ont. C.A.).
- <sup>63</sup> *R. v. Robertson* (1979), 46 C.C.C. (2d) 573, 10 C.R. (3d) 5-46, Ont. (C.A.).
- <sup>64</sup> *R. v. Campbell* (1978) 4 C.R. (3d) 5-18, 26 N.S.R. (2d) 460, 40 A.P.R. 460 (C.A.).
- <sup>65</sup> *R. v. Doran* 16 C.R.N.S. 9, 5 C.C.C. (2d) 366, (1972) 1 O.R. 405 (C.A.).
- <sup>66</sup> *R. v. Priest* (1974), 25 C.R.N.S. 252 (N.S.C.A.).
- <sup>67</sup> *R. v. A.B.* (Ont. Dist. Ct., June 18, 1982).
- <sup>68</sup> *R. v. Pruner* (1979), 9 C.R. (3d) 5-8 (Ont. C.A.) at 5-11.
- <sup>69</sup> *Young v. The Queen* (1980), 27 C.R. (3d) 85 (B.C.A.A.).
- <sup>70</sup> *R. v. Adamson* (Ont. C.A., July 29, 1981).
- <sup>71</sup> *R. v. Beaudoin*, (1981) C.S.P. 1037.
- <sup>72</sup> McCaldon, R.J. and S. Williams, *The Sex Offender-Predator of Patient?* Paper presented to Sexology Branch, Ontario Psychiatric Association, Ottawa, October 1980 (mimeo).
- <sup>73</sup> West, D.J., C. Roy and F.L. Nichols, *Understanding Sexual Attacks: A Study based upon a Group of Rapists undergoing Psychotherapy*, London: Heinemann, 1978.
- <sup>74</sup> Quinsey, V.L., The Assessment and Treatment of Child Molesters: A Review, *Canadian Psychological Review*, 18: 204-220, 1977.
- <sup>75</sup> Ross, R.R. and P. Gendreau, *Effective Correctional Treatment*, Toronto: Butterworths and Co. (Canada) Ltd., 1980.
- <sup>76</sup> *Supra*, at note 72.
- <sup>77</sup> *Supra*, at note 73, p. 149.
- <sup>78</sup> Hartman, V., Notes on Group Psychotherapy with Pedophiles, *Canadian Psychiatric Association Journal*, 10: 283-89, 1965.
- <sup>79</sup> Roper, P., The Effects of Hypnotherapy on Homosexuality, *Canadian Medical Association Journal*, 96: 319-27, 1967.
- <sup>80</sup> Marshall, W.L., The Modification of Sexual Fantasies: A Combined Treatment Approach to the Reduction of Deviant Sexual Behavior, *Behavior Research and Therapy*, 11: 557-64, 1973.
- <sup>81</sup> *Supra*, at note 72, p. 10.
- <sup>82</sup> *Supra*, at note 60, pp. 14-15.
- <sup>83</sup> *Supra*, at note 74, p. 216.
- <sup>84</sup> Gendreau, P. and R.R. Ross, Effective Correctional Treatment, Bibliotherapy for Cynics, in R.R. Ross and P. Gendreau, *Effective Correctional Treatment*, Toronto: Butterworths and Co. (Canada) Ltd., 1980, p. 3.
- <sup>85</sup> *Ibid.*, p. 4.
- <sup>86</sup> *Ibid.*, p. 4.
- <sup>87</sup> *Supra*, at note 73, p. 155.
- <sup>88</sup> *Ibid.*, p. 156.
- <sup>89</sup> *Ibid.*, pp. 156-157.
- <sup>90</sup> *Supra*, at note 52.
- <sup>91</sup> *Supra*, at note 60, pp. 14-15.
- <sup>92</sup> Wormith, J.S., *A Survey of Incarcerated Sexual Offenders*, Saskatoon: Regional Psychiatric Centre (Prairies), 1982 (mimeo) pp. 11-12.
- <sup>93</sup> *Supra*, at note 5, p. 217.
- <sup>94</sup> *Ibid.*, p. 120.
- <sup>95</sup> *Supra*, at note 12, p. 48.
- <sup>96</sup> *Ibid.*, p. 48.
- <sup>97</sup> *Supra*, at note 14, p. 117.
- <sup>98</sup> *Ibid.*, p. 121.



## Chapter 40

# Recidivism

Over a period of several decades, a number of federal inquiries have called attention to the need for comprehensive research on recidivism and for consideration of more effective means of treating and managing recidivists. In this chapter, the reports of these inquiries and the findings of the main Canadian research studies on recidivism are cited. As well, findings from the National Corrections Survey are presented in conjunction with a number of case studies taken from accounts given by persons contacted in the National Population Survey and cases obtained in the review of sentencing decisions.

The findings concerning recidivism are considered in relation to the prior criminal records of offenders and the types of victims of sexual offences for which the offenders were currently sentenced. In the first category, information was obtained concerning convicted male child sexual offenders having no previous convictions and two types of recidivists, respectively, those previously convicted for sexual and non-sexual offences. The findings on recidivism are also considered in relation to whether the young victims of offences for which offenders were currently sentenced were males, females or multiple victims.

## Advisory Reports and Previous Research

The concept of recidivism, or the re-occurrence of crime, has been expanded in recent decades from a listing of rates of reconviction to encompass an assessment of the experience of victims and offenders, documentation of crimes previously committed and consideration of whether there has been a progression from minor to more serious offences. As in the instance of the present review, comprehensive documentation of sexual recidivism has been curtailed by the absence of appropriate control groups and a paucity of information concerning the long-term consequences of different sentencing decisions and penal policies concerning the management and treatment of convicted offenders. The information that is usually available focusses upon persons who are known to be failures with relatively little being known about offenders who do not later regress into criminal activities.



In its review of Canadian reports dealing with sexual recidivism, the Committee found that while there was an abundance of conjecture, few studies contained comprehensive and reliable documentation, particularly in relation to those criminals having children and youths as victims. In most of the reports of advisory commissions and research studies, the ages and sexes of victims are not reported. In some studies, only a few of the sexual offences were considered, while others dealt exclusively with offenders who were in custody or under supervision of either federal or provincial correctional services. The situation of the offenders studied in these reports has been variously derived from: charges laid by the police; pre-sentencing reports; sentences imposed by courts; offenders on probation; offenders who are incarcerated; and offenders, either before or after sentencing, who have been referred for clinical assessment. As a result of the different research methods used involving different groups of offenders, there is no consensus in the main Canadian studies concerning the levels and types of sexual recidivism regardless of the ages of the victims of these offences.

- *1938 Royal Commission to Investigate the Penal System of Canada (Archambault Report)*. On the basis of its review of the rates of recidivism between 1891 and 1936, the 1938 Royal Commission concluded that "the present system is neither effecting reformation nor affording protection to society against further offences by prisoners when liberated".<sup>1</sup> In a special analysis of 188 recidivists, it was found that over three in four had been convicted for the first time before age 23, one in six was a drug addict and almost nine in 10 had only a primary school education.

The Report of the Commission recommended that "accurate statistical information" be assembled to permit assessment of "recidivism, the success or failure of probation, ticket-of-leave or parole and other kindred matters".<sup>2</sup>

- *1956 Committee to Inquire into the Principles and Procedures Followed in the Remission Service (Fauteux Report)*. On the issue of convicted sexual offenders, the 1956 Committee concluded that "it is obvious that effective treatment can only be discovered if such persons are made the subjects of special study. We feel that sex offenders should be removed from the normal prison population and that intensified research on the problem should be carried out".<sup>3</sup>
- *1956-59 Toronto Forensic Clinic Study*. In this study of 132 offenders (54 exhibitionists, 55 pedophiles and 23 homosexuals) referred for psychiatric assessment and treatment, it was noted that "the low recidivism rate of sexual offenders is generally recognized. However, if a study population is selected from prison, previous convictions may go up as high as 50 and 60 per cent<sup>4</sup> . . . exhibitionism has consistently had the highest recidivism rate, followed by homosexual pedophilia with a recidivism rate of from 13 per cent to 28 per cent. Heterosexual offences against children show about half this recidivism rate, varying from 7 per cent to 13 per cent<sup>5</sup> . . . exhibitionists exposing to children are more likely to become repeaters than those who expose to adults".<sup>6</sup>

In reports subsequently issued relating to this study, the researchers reiterated their conclusions concerning the low level of sexual recidivism. In an article published in 1968, it was noted: "A number of studies report a general recidivist rate for all sex offenders at between 12 and 17 per cent.

This low recidivist rate of sexual offenders, compared with other types of offenders, is now generally recognized. Heterosexual pedophiles who are first offenders show a recidivist rate in a number of studies of between 7 and 13 per cent, which is consistently about one-half the rate one finds for homosexual pedophiles or exhibitionists. Our own studies indicate a rate of between 6 and 8 per cent<sup>7</sup> . . . The recidivist rate for first offenders of this type is low, which indicates a good probation risk”.<sup>8</sup>

- *1957 British Study of Sexual Offences*. Of 1985 convicted sexual offenders having children, youths and adults as victims, 17.3 per cent had previous convictions for sexual offences. The report notes that “there is a marked difference between the proportion of sexual recidivists in the heterosexual class (12%) and in the indictable homosexual class (23%). Most of the offences in both these classes were committed against children, but it appears that offenders against boys were relatively more persistent than those against girls”.<sup>9</sup> No detailed breakdown of the ages of victims of recidivists was given.
- *1958 Royal Commission on the Criminal Law Relating to Criminal Sexual Psychopaths (McRuer Report)*. In this inquiry appointed to review the criminal law relating to criminal sexual psychopaths, statistical information assembled by the R.C.M.P. concerning 3110 convicted sexual offenders was reviewed and an analysis was made of 23 incarcerated “sexual psychopaths”. As noted in Chapter 36, *The Research Record*, the findings presented in the Royal Commission’s Report do not accord with its conclusion that “recidivism is not prevalent among sexual offenders generally”.<sup>10</sup> The Report’s statistics indicate that about one in seven offenders (14.1 per cent) had had previous convictions for sexual offences and a comparable proportion had subsequently committed sexual offences. In a footnote, the Report notes that “50 per cent were convicted of other crimes before or after their first conviction for a sexual crime. This tends to show that an unusually high percentage of sexual offenders are recidivists in crime”.<sup>11</sup>
- *1961-62 Study of Persons Charged with Sexual Offences Whose Cases Came Before Metropolitan Toronto Courts*. Information was assembled for a year concerning 597 persons charged with sexual offences whose cases came to court.<sup>12</sup> The study proceeded on the assumption that persons charged with having committed sexual offences were ‘offenders’; it was on the basis of this unusual assumption that rates of recidivism were calculated. In the instance of indecent assault against a female involving victims age 12 and younger, of 86 persons so charged, 55 were sentenced (64.0 per cent). Based on the inclusion of findings for both convicted and non-convicted males, the sexual recidivism rates calculated for various types of ‘offenders’ were: rape (5.3 per cent); indecent assault female, under age 13 (20.1 per cent); indecent assault female, 13 — 19 years-old (5.1 per cent); indecent act (24.1 per cent); indecent assault male (35.4 per cent); and gross indecency (9.9 per cent).
- *1965 U.S. Study of Sex Offenders*. In this study by the Institute of Sex Research founded by A.C. Kinsey, the main categories used in the analysis of findings concerning 2244 convicted white male sexual offenders were: heterosexual and homosexual offences; consensus or aggression; age of victims (under 11, 12-15, 16 and older); and incest.



About a third of the victims (34.7 per cent) of offenders were under 16 years-old (70.2 per cent, girls; 29.8 per cent, boys). Two in five offenders (39.2 per cent) having children and minors as victims were sexual recidivists.<sup>13</sup> Excluding victims of incest and homosexual offences for whom findings concerning the use of physical force were not given, the study reported that one in eight recidivists (12.2 per cent) had aggressively assaulted young female victims. On the basis of accounts of the offences reported by offenders, it was concluded that a majority (87.8 per cent) of these sexual acts had involved the consent of young victims.

The rate of recidivism varied in relation to whether heterosexual (33.1 per cent) or homosexual (53.4 per cent) offences had been committed against children and minors. The study's main conclusion with respect to the age of the victim was that "there is a definite correlation between recidivism and the age of the sexual object . . . men whose offences were against children have more per capita convictions than those . . . whose objects were older."<sup>14</sup>

- *1967 Study of Rapists in the Kingston Penitentiary*. Of 30 rapists incarcerated in a federal penitentiary, 41 per cent of their victims had been age 15 or younger and 32 per cent had been between 16 and 20 years-old.<sup>15</sup> About one in five (19 per cent) of this small group of incarcerated offenders had previously been convicted for a sexual offence. No separate analysis was given concerning recidivists having children and youths as victims. Despite the absence of information on the level of recidivism of other types of convicted Canadian offenders, the study concluded that "rapists do not have a high incidence of previous sexual offences, and this is supported by other studies<sup>16</sup> . . . very few of these offenders are considered as good prospects for psychiatric treatment. Because rape is a serious and harmful offence, and because the offenders' psychopathology cannot be easily modified, long periods of removal from normal society are perhaps justifiable."<sup>17</sup>
- *1969 Canadian Committee on Corrections (Ouimet Report)*. While the 1969 Committee recommended the repeal of legislation relating to habitual and dangerous sexual offenders, its findings concerning the latter group were limited to a brief commentary about the existing statute and the presentation of statistics on the geographical distribution of provinces where dangerous sexual offenders had been sentenced.<sup>18</sup> The Report strongly recommended that extensive empirical research be undertaken concerning sexual recidivism.
- *1974 National Study of Sexual Offenders Incarcerated in Federal Penitentiaries*. Drawing upon the records of the Canadian Penitentiary Service, this study undertook a detailed analysis of 495 sex offenders having sentences of two years or longer who were incarcerated in federal penitentiaries. Six in seven offenders (85.5 per cent) had previous convictions for sexual and non-sexual offences. In comparing its findings on sexual recidivism with those of earlier studies, the report notes "that although the recidivism rate may not have been high in 1948, or in 1969, 43% of all sexual offenders currently incarcerated have been previously convicted of sexual offences."<sup>19</sup> No findings were given concerning the ages of victims of sexual recidivists.
- *1977 Study of Sexual Offenders Imprisoned in Ontario Penitentiaries*. In this study of 150 male sexual offenders incarcerated in federal penitentiaries in Ontario, the rate of sexual recidivism was 48 per cent for 109



rapists and 61 per cent for 49 pedophiles. The study noted that “clearly both groups were recidivistic, with pedophiles being somewhat more incorrigible than the rapists<sup>20</sup> . . . offences against children (so specified on the F.P.S.) accounted for 29% of the pedophiles’ previous offences, and *none* of the rapists’ previous convictions.”<sup>21</sup> Of the group of 82 recidivists, one in nine (11.0 per cent) had children as victims of offences for which they were currently incarcerated.

- *1979 Study of Incarcerated Sexual Offenders in the Prairie Region.* Of 205 incarcerated sexual offenders, 44.4 per cent had previously been convicted for sexual offences.<sup>22</sup> About a third of the victims (36 per cent) involved in current convictions had been children. The level of recidivism varied with the types of offences committed: rape (36.7 per cent); attempted rape (46.7 per cent); indecent assault female (47.1 per cent); indecent assault male (66.7 per cent); sex with a minor (60.0 per cent); gross indecency (66.7 per cent); incest (50.0 per cent); and buggery (20.0 per cent).

None of the main Canadian reports chose to identify the risks to children and youths represented by sexual recidivists or dealt with the issue of penal policies specifically focussing on the treatment and management of these offenders. As previously noted, although several federal inquiries have recommended that extensive research be undertaken in regard to sexual recidivism, it is evident that in the past these concerns have not been acted upon by justice and correctional services.

## Case Studies

The accounts concerning sexual recidivism given by persons contacted in the National Population Survey confirm the general finding that only a small proportion of sexual offences which are committed is actually reported to the police. In addition to these accounts, the sentencing case studies taken from the review of court decisions illustrate the elements of the offences committed, the circumstances in cases of this kind which are considered by courts on sentencing and the variation in the lengths of the sentences imposed.

- *33 year-old cosmetics specialist.* When she was six years-old, she was initially exposed to by a “boy about 13 (who then) told me to put his penis in my mouth, or he would tell my parents that I did something else wrong. I was afraid of boys for a short period, like maybe a month.” Ten years later, she told her mother.

“I wished that sex would have been more open at that time, then I would probably have told my parents and maybe this boy could have been helped. A few years later, he was charged with rape in another case.”

- *22 year-old mother.* When she was 12 “an old man made sexual passes at me” and attempted to rape her. He was in his mid-fifties “a retired, former murderer who served 20 years for beating his wife to death with a hammer”. Because he was a family friend, “I didn’t tell. I feel it could have been prevented, if my mother had been more observant.”

- *51 year-old housewife.* At the age 16 when she was a patient in hospital, a medical interne fondled her breasts and stimulated her genitals. "It was never completed because of a struggle and shouting and running. I didn't want to see men for a long time." She told her parents and their family doctor. "No action was taken because they couldn't find him. It was a bitter experience, especially the outcome a few months hence. This person had been on drugs from the hospital. He became a murderer and killed a little child in \_\_\_."
- *34 year-old mother.* When she was 17, she was raped by a 26 year-old labourer. "I got no support from my parents and to this day I have felt let down. I am afraid of most men and threatening situations. I have had help through therapy several times because I don't like sex now and it has affected my marriage. The man who did it continued to harass me for sometime and the police told me to move out of my building, as he kept following and threatening to 'get even' for charging him. He was jailed, later, not on my rape charge, but for manslaughter. My charges ended up being dropped as I was told by my doctors I couldn't handle the stress involved."
- *30 year-old author.* When she was 15, she was sexually assaulted by her 19 year-old first cousin. The incident was not reported. "He was a relative. We were afraid of a scandal in the family. My father talked to him. I wish he had taken firmer steps 'cause it probably would have stopped him from raping a girl a few months later. Because my father didn't think he had done anything serious to me, he didn't press the point too much. Dad never knew I fought him like a devil and got away. Things might have been different had I panicked."
- *23 year-old secretary.* When she was 16, she was raped by an acquaintance from school and as a result of the assault, she had an abortion. "He was let out of jail in two years. He then almost killed a four year-old boy with unwanted sex."
- *30 year-old domestic worker.* When she was 13, her parents' best friend fondled her crotch and anus. When she was 15, this man, an electrical engineer, attempted to rape her. Thirteen years later, she told her parents. "I found out that he has been doing a lot worse things since I grew up and he tried again while he was married. He exposes himself to little girls. The police know about him. I moved away. It didn't scar me because I could cope, but others might not. Help-lines made available and programs for each province would help."
- *31 year-old bus driver.* When she was eight, she was exposed to several times by her 19 year-old uncle. The police were contacted after he had raped her. Subsequently, he was sentenced and imprisoned. "I always felt I did something wrong. The way the police questioned me and the doctors examined me, I was very afraid for a long time. I had no one to talk to until I met my husband. My parents were ashamed and no help. After he got out of prison, he tried something with a girl friend and she told her mother."

I should have told when he first started touching and petting me. I didn't know anything then. Parents in the fifties and sixties did not explain anything, even the basics. To this day, my Mother has never talked to me about sex."

- *30 year-old wife.* When she was six, her 15 year-old foster brother attempted to rape her. She told her foster mother who contacted a child welfare agency. "My foster mother hit him a couple of times. The social worker didn't believe that a six year-old knew those kinds of things. She thought I was making it up."

The assaults were repeated by her foster brother. "People should start checking homes with foster children better and start listening to children from now on."

- *27 year-old mother.* When she was nine "my 'uncle', shortly after my brother's death, took my sister and me on a vacation to a cabin. He said he would sleep in the same bed as us (only one available) and he tried to sexually molest me and my sister. He was a good friend of our parents and had known our family for years. I never realized what he was trying to do." The incident was not reported.

"I wish that during my childhood I had sex education, that my Mother had dealt with my development as a female and that I was secure enough in that family to believe that they would believe what I said did happen. Though I appreciate the fact that I was not raped, I was scarred psychologically in that I am emotionally inhibited to this date with men. I believe sexual transgressors should be given a stiff penalty. The man who molested me was later charged with incest with his own daughter and apparently has molested many other children.

I really feel now that my parents could have helped me better. It was never talked about, even to this day. They got very upset with me years later when I wouldn't go to his house and meet his wife."

- *R. v. Head (1970).*<sup>23</sup> In connection with the rape of a six year-old girl, the accused, aged 44, was charged with having sexual intercourse with a female under age 14. The physical injuries suffered by the child were:

"a tearing of the vaginal opening to within one quarter inch of the anus. The mucous lining of the vagina was ripped and the muscles and tendons were divided down to the rectal mucosa."

The accused had a prior record for indecent assault on a young girl; psychiatric testimony indicated that he was likely to recidivate, especially when under the influence of alcohol.

At trial, the accused was sentenced to life imprisonment. For reasons of public protection, the Court of Appeal dismissed the accused's appeal against sentence.

- *R. v. Walsh (1979).*<sup>24</sup> The accused, a 21 year-old with over 16 previous convictions for non-sexual offences, offered a ride home to a 16 year-old girl. Instead, he drove her to a secluded place. "Notwithstanding her tears and protests, the accused forced her to submit to a variety of sexual acts, some of a humiliating nature, culminating in sexual intercourse." When arrested, the accused was found to be unlawfully at large from a penal institution, after failing to return upon the expiry of a temporary pass; further, he had been using a false automobile registration and driver's licence. At trial, the judge observed that the light sentences previously received by the accused had done little to reform him. Since the court's primary concern with regard to violent crime was public protection, it was deemed necessary to impose a sentence sufficient to deter the



accused and others from committing similar offences. However, since little actual violence had been used and the victim had not suffered physical injuries, a four year sentence was imposed.

- *R. v. Fuller* (1981).<sup>25</sup> The 13 year-old complainant was invited to stay overnight at the accused's home by his common-law wife. The 34 year-old accused attempted to rape the girl, who escaped by locking herself in the bathroom and leaving when the accused fell asleep. The accused had a criminal record dating back to 1964, which included crimes of rape and assault causing bodily harm. The accused was on parole from his rape conviction when the offence occurred. A psychiatrist testifying at the trial stated that the accused suffered from a personality disorder marked by suspiciousness, restlessness and emotional lability, and tended to resort to alcohol as a means of escape. At trial, the judge imposed an eight year sentence.

On appeal by the accused, the Court of Appeal upheld the sentence. The court held that while the accused had unusual artistic talent which afforded some hope for his rehabilitation, he was a dangerous and violent person who should be incarcerated.

- *R. v. Dawson and Williams* (1980).<sup>26</sup> Of four individuals convicted, two appealed against sentence. The complainant, a 15 year-old girl, met in the early morning with a group of friends and acquaintances including the four accused, the appellant Dawson's common-law wife and the girlfriend of one of the non-appellant accused. After stopping at several places to eat and drink, the group went to Dawson's apartment in the early afternoon. When the other women left to buy food for the Dawsons' baby, the complainant remained behind with the four men.

When the girl attempted to leave, Williams grabbed her by the arm, forced her into the bathroom and punched her in the mouth when she struggled to escape. In spite of her crying, the girl was forced onto the floor and raped. She was then raped, buggered and forced to fellate the other males in the bathroom. Threats of further physical violence were used to obtain her submission. Subsequently, she was forced to remove the rest of her clothes, and was again raped in the bedroom; in addition, she was forced to masturbate two of the men who proceeded to shake an open beer bottle and then forced it into her rectum and vagina and to punch her in the genital area. When the other two women returned, the victim managed to escape, running naked from the apartment.

In sentencing Dawson to seven years' imprisonment on a charge of rape, and two years' concurrent on a charge of buggery, the trial judge noted the accused's lengthy criminal record, consisting of 11 prior convictions for non-sexual offences, and the fact that the offences against the 15 year-old victim had been committed in his home. In view of his relatively minor criminal record, Williams received a five year sentence for rape and a two year concurrent sentence for indecent assault on a female. Both accused appealed against sentence.

Both appeals were dismissed. Dawson's sentence was deemed to be appropriate since:

"as a man ten years older than any of the other accused, he should have been able to exercise some control over them or over their actions in his residence [and taking into account] the nature of the offences, the cruel and demeaning manner with which the victim was treated, the lengthy and serious criminal record of Dawson, that he exhibited no remorse, that the

offences took place in his residence and that he was fourteen years older than the complainant . . .”

In dismissing Williams’ appeal, the court noted that even though he was young and his criminal record minor, he was the first of the accused to confine the complainant, that he struck her twice and that it was he who indecently assaulted her with a beer bottle. The court further observed that Williams was involved continuously throughout the whole series of attacks.

## Previous Criminal Record

A sizeable proportion of convicted male child sexual offenders about whom information was obtained in the National Corrections Survey had previously been in conflict with the law. Regardless of whether these offenders were currently sentenced for homosexual or heterosexual offences, about two in three (62.3 per cent) had prior convictions for sexual and non-sexual offences. In relation to the victims of offences of their current convictions, the rates of recidivism were: 62.2 per cent, female victims; 62.0 per cent, male victims; and 66.7 per cent, multiple victims.

In a number of cases, information was missing or only partially reported concerning previous offences committed by offenders when they were juveniles or adults. In the former instance, the frequent omission of this type of information is attributable to the policies adopted by child welfare and law enforcement services whose purpose is to protect juvenile offenders by means of not recording offences, by reclassifying the acts committed, or by not transferring relevant information to the criminal records of adult offenders. In the instance of recording previous convictions involving adult offenders, it was found that while this type of information may be available in the general occurrence records of the police or in records of sentences imposed by courts, it either had not been transposed in a proportion of cases to correctional files, or in other

**Table 40.1**  
**Previous Criminal Record of Convicted**  
**Male Child Sexual Offenders**

Previous Criminal Record	Male Victims (n=129)	Female Victims (n=545)	Multiple Victims (n=21)
	Per Cent	Per Cent	Per Cent
None (as an adult)	38.0	37.8	33.3
Convictions:			
(i) Juvenile	13.2	13.9	19.0
(ii) Adult	62.0	62.2	66.7

*National Population Survey.* The sub-categories of juvenile and adult convictions are non-accumulative.

instances, such information had only partially been listed. For these reasons, the information obtained in the National Corrections Survey on recidivism involving previous convictions for sexual and non-sexual offences constitutes an under-estimate of the actual number of cases known to enforcement and correctional services.

Since a proportion of convicted child sexual offenders had prior records involving offences committed both when they were juveniles and adults, the findings reported are non-accumulative. For the two main groups of offenders, those having committed homosexual and heterosexual offences, about one in seven was known to have committed an offence as a juvenile. Among the smaller group of offenders currently convicted of sexual offences having multiple victims, this proportion rose to about one in five.

Of offenders having juvenile records, proportionately more of those who were subsequently convicted of heterosexual offences were younger when they

**Table 40.2**  
**Convicted Male Child Sexual Offenders:**  
**Age at First Previous Conviction**

Age at First Previous Conviction	Male Victims	Female Victims	Multiple Victims
	Per Cent	Per Cent	Per Cent
<i>Juvenile Offences</i>	(n=17)	(n=76)	(n=4)
14 years-old and under	17.6	26.3	25.0
14-15 years	29.4	35.5	25.0
16-17 years	35.3	11.8	50.0
Not reported	17.6	26.3	—
<b>TOTAL</b>	<b>99.9*</b>	<b>99.9*</b>	<b>100.0</b>
<i>Adult Convictions</i>	(n=80)	(n= 339)	(n= 14)
21 years-old and under	11.0	14.8	—
21-30 years	23.2	33.8	35.7
31-40 years	22.0	23.1	21.4
41-50 years	15.8	9.7	—
51 years-old and older	7.3	4.8	21.4
Not reported	20.7	13.8	21.4
<b>TOTAL</b>	<b>100.0</b>	<b>100.0</b>	<b>99.9*</b>

*National Corrections Survey.*

\* Rounding error



had first come in conflict with the law than those who were later convicted of homosexual offences. A similar distribution characterized the age when offenders were first convicted as adults. On average, when they were first sentenced as an adult, offenders later convicted of heterosexual offences were younger than those later sentenced for homosexual offences.

While about a third (37.7 per cent) of the offenders had no prior criminal record, a large proportion of recidivists had been sentenced several times. About one in five convicted male child sexual offenders (22.9 per cent) had one previous conviction with the proportion in this category varying slightly in relation to the nature of their current convictions (24.1 per cent, heterosexual offences; 21.4 per cent, multiple victims; and 18.4 per cent, homosexual offences).

On average, the recidivists currently convicted of sexual offences against children and youths had 6.7 previous convictions for sexual and non-sexual offences committed when they were adults. While the recidivists having previous convictions for only non-sexual offences had proportionately fewer prior convictions (6.1 per offender) than those who were sexual recidivists (7.5 per offender), the findings indicate that a substantial proportion of both groups had been in conflict with the law on several occasions and that the rates of recidivism tended to be higher for those currently sentenced for homosexual offences than those who had committed heterosexual offences.

Type of Previous Conviction	Convicted Offenders Having Previously Served Custodial Sentences by Type of Victim of Current Conviction							
	Males Victims		Female Victims		Multiple Victims		Total	
	Non-Accumulative Percentages							
	No.	%	No.	%	No.	%	No.	%
Non-sexual offences	5	17.2	50	22.5	1	33.3	56	22.0
Sexual offences	28	54.9	52	44.4	4	36.4	84	46.9
TOTAL	33	41.3	102	30.1	5	35.7	140	32.3

A third (32.3 per cent) of the recidivists having prior convictions for sexual and non-sexual offences had previously been imprisoned on at least one occasion. The proportion of sexual recidivists in this category was double (46.9 per cent) that of the proportion of non-sexual recidivists (22.0 per cent). In the latter category, offenders currently sentenced for offences against females were somewhat more likely to have been previously incarcerated than offenders currently sentenced for homosexual offences. This distribution was reversed in the case of sexual recidivists, of whom 54.9 per cent serving sentences for homosexual offences and 44.4 per cent serving sentences for heterosexual offences had

previously been imprisoned. About a third of the offenders having multiple victims (35.7 per cent), regardless of the nature of their previous offences had served time in prison prior to their present convictions.

One in eight recidivists (12.2 per cent) had previously been placed in protective custody with this having involved more offenders subsequently convicted of homosexual offences (17.2 per cent) or having multiple victims (18.2 per cent) than in the case of offenders who were later sentenced for sexual offences against young female victims (10.5 per cent). One in 25 recidivists (4.0 per cent) had participated or been involved on an earlier occasion in an 'incident' while in prison (sit-downs, riots, hostage-taking, assaults); one in eight (11.9 per cent) had attempted to escape. A fifth of the recidivists (21.1 per cent) were reported to have a history of violent behaviour, (11.5 per cent, offenders later convicted of homosexual offences; 20.0 per cent, multiple victims; and 23.6 per cent, heterosexual offenders).

## Lengths and Types of Current Sentences

Information given in Table 40.3 on the lengths and types of sentences imposed lists the most serious offence for which an offender was currently convicted, the accumulative length of the sentences served consecutively, and whether the offender had been imprisoned, placed on probation or given other sentences. Because the 62 dangerous sexual offenders in the survey were given indeterminate sentences, findings for this group are not included in this listing. Offenders convicted of a small assortment of other sexual offences or receiving other types of sentences (e.g., suspended sentences, fines) are listed in the 'other' categories in Table 40.3.

In relation to the sentences imposed, the offenders who were the most severely dealt with by the courts were those convicted of: rape, attempted rape; sexual intercourse with a female under age 14; and buggery. Offences in the middle range, those resulting in proportionately fewer offenders being incarcerated and invoking shorter sentences than in the case of the first group of offenders, included: sexual intercourse with a female age 14 but under age 16; incest; gross indecency; sexual intercourse by a guardian [section 153 (1)(a) — there were no convictions under section 153 (1)(b)]; and indecent assault against a male.

Half of the convicted offenders (49.9 per cent) had committed three types of offences which were the least severely punished on sentencing. In comparison with other sentences, a higher proportion of convictions for indecent assault against a female, section 33 of the *Juvenile Delinquents Act* and indecent act resulted in offenders being placed on probation and given shorter custodial sentences. The findings in Table 40.3 clearly indicate the effects of sentencing in relation to different sexual offences in apportioning convicted offenders having custodial convictions between provincial and territorial prisons (sentences under two years) and federal penitentiaries (sentences over two years).

Table 40.3

## Type and Length of Sentences of Convicted Male Child Sexual Offenders

Sexual Offence for which Offender was Currently Convicted	Type and Length of Sentence					
	Custodial Sentence		Probation		Other <sup>1</sup>	Total
	Number of Offenders	Average Length of Sentence (months)	Number of Offenders	Average Length of Sentence (months)	Number of Offenders	
Rape	72	97.7	—	—	—	72
Attempted rape	17	42.6	—	—	—	17
Sexual intercourse, female under 14	35	50.3	9	22.0	3	47
Sexual intercourse, female 14 under 16	10	28.6	3	14.8	—	13
Indecent assault female	138	13.0	101	24.5	4	243
Incest	23	25.7	6	32.0	3	32
Sexual intercourse/guardianship (s. 153(1)(a))	6	9.5	2	24.0	—	8
Buggery	7	39.9	1	24.0	—	8
Indecent assault male	34	20.7	31	28.1	1	66
Gross indecency	26	16.3	15	28.0	—	41
Indecent act	5	3.3	48	20.8	2	55
J.D.A. s. 33	8	6.0	12	20.3	—	20
Other <sup>1</sup>	—	—	—	—	15	15
<b>TOTAL</b>	<b>381</b>	<b>36.0</b>	<b>228</b>	<b>24.2</b>	<b>28</b>	<b>637</b>

*National Corrections Survey.* The offences committed by 62 dangerous sexual offenders given indeterminate sentences are excluded from this table.

<sup>1</sup> 'Other' dispositions include: Suspended sentence; fine; and a combination of these and other dispositions. For these reasons, the 'average' length of sentences is not given for this category.

Three in five convicted male child sexual offenders (59.8 per cent) were given custodial sentences, over a third (35.8 per cent) were given probation, and one in 23 (4.4 per cent) received other sentences. Usually in conjunction with other sentences, a small number of offenders were fined in relation to convictions for four types of sexual offences.

The findings indicate that fines are relatively seldom used as a form of punishment against convicted male child sexual offenders. This sanction is typically imposed in conjunction with probation or a suspended sentence; its use appears to be limited to convictions for minor offences committed by first-time offenders. Two in three convicted offenders (66.7 per cent) who were fined had no prior criminal record.



Sexual Offence	Number	Average Fine
Indecent assault female	6	\$ 633.33
Gross indecency	2	\$ 500.00
Indecent act	8	\$ 381.25
J.D.A. s. 33	3	\$ 283.33

The six categories of available maximum sentences for the majority of sexual offences for which the offenders were convicted (at the time of sentencing and when the survey was conducted) were: summary conviction having a maximum of six months' imprisonment; imprisonment for 2, 5, 10 and 14 years; and life imprisonment. Table 40.4 lists the maximum penalty for each of the main sexual offences, the average lengths of the sentences imposed against offenders in the survey, and gives the latter as a proportion of the former.

**Table 40.4**  
**Maximum Sentences Available and**  
**Average Length of Custodial Sentences Imposed Against**  
**Convicted Male Child Sexual Offenders**

Maximum Sentence Available by Type of Sexual Offence	Average Length of Custodial Sentence Imposed Against Convicted Male Child Sexual Offenders (months)	Proportion of Length of Average Sentences Imposed to Maximum Penalty Available (%)
<i>Life Imprisonment</i>		
• Rape	97.7	—
• Sexual intercourse with female under 14	50.3	—
<i>14 Years</i>		
• Incest	25.7	15.3
• Buggery	39.9	23.8
<i>10 Years</i>		
• Attempted rape	42.6	35.5
• Indecent assault male	20.7	17.3
<i>5 Years</i>		
• Sexual intercourse with female 14 under 16	28.6	47.7
• Indecent assault female	13.0	21.7
• Gross indecency	16.3	27.2
<i>2 Years</i>		
• Sexual intercourse, guardianship	9.5	39.6
• Juvenile Delinquents Act, s. 33	6.0	25.0
<i>6 months (summary conviction)</i>		
• Indecent act	3.3	55.0

*National Corrections Survey.* Findings for 381 convicted offenders given custodial sentence excluding: 62 dangerous sexual offenders.

Sharp variation occurs in relation to different sexual offences between the average lengths of the sentences imposed as a proportion of the various maximum sentences available. The use of the proportional measure comparing the average lengths of the sentences imposed to the maximum available terms of imprisonment provides a means of assessing current sentencing practices in relation to different offences. In the case of incest and buggery, both having maximum available sentences of 14 years, the average sentences imposed were respectively 25.7 and 39.9 months. In comparison to the maximum available sentence of 14 years for these indictable crimes, the sentences imposed were proportionately 15.3 per cent for incest (an average sentence of 25.7 months in comparison to a maximum of 168 months, or 14 years) and 23.8 per cent for buggery. The proportional measure combined for the two offences having a maximum of 14 years' imprisonment is 19.5 per cent, namely, the sentences imposed for incest and buggery represented about a fifth of maximum terms available of 14 years' imprisonment.

Setting aside the offences not listing specific years of imprisonment (life imprisonment for rape and sexual intercourse against a female under age 14) when the proportional measure is aggregated for the other sexual offences having specified maximum terms of imprisonment, **there is an inverse correlation between the ranking of the maximum available sentences and the average lengths of the sentences actually imposed against convicted male child sexual offenders.**

Maximum Length of Custodial Sentence Available	Proportion of Average Length of Custodial Sentences Imposed to Maximum Penalty Available
	%
14 years	19.5
10 years	26.4
5 years	32.2
2 years	32.3
6 months	55.0

For sexual offences having higher maximum penalties (e.g., 14 years), on average, the sentences imposed were a fifth (19.5 per cent) of the maximum terms of imprisonment. In contrast, for offences specifying two years' imprisonment, the average lengths of the custodial sentences imposed were a third (32.3 per cent) of the maximum available penalty. This proportion rose to 55.0 per cent in the case of the offence of indecent act carrying a maximum sentence of six months. In relation to the different levels of the maximum available sentences, the findings indicate that offenders convicted of minor offences were dealt with, on average, more severely than those who had been convicted of more serious offences relative to the maximum penalties available. These trends suggest that **where maximum sentences are high, the courts appear to be reluctant to impose long terms of imprisonment. Conversely, where shorter maximum sentences are available, proportionately more offenders were given longer sentences.**

Maximum Length of Custodial Sentence Available	Average Length of Custodial Sentences Imposed		
	Shorter	Intermediate	Longer
Life imprisonment	Sexual intercourse, female under age 14 (50.3 months)	—	Rape (97.7 months)
14 years	Incest (25.7 months)	—	Buggery (39.9 months)
10 years	Indecent assault male (20.7 months)	—	Attempted rape (42.6 months)
5 years	Indecent assault female (13.0 months)	Gross indecency (16.3 months)	Sexual intercourse, female age 14, but under 16 (28.6 months)
2 years	J.D.A., s. 33 (6.0 months)	—	Sexual intercourse, guardian (9.5 months)

Within each of the categories of offences having different sentencing limits, there was sharp variation in the average lengths of the sentences imposed for different types of sexual offences.

In each of the sentencing categories, acts involving completed and attempted vaginal and anal penetration with a penis resulted in longer average sentences imposed than for other types of proscribed sexual behaviour. This relationship is sharp and consistent. However, even for offences proscribing intercourse, having the same maximum available sentences, sharp differences occurred in relation to the average lengths of the sentences imposed. On sentencing, these variations may be accounted for: by differences in the elements of the offences committed (e.g., those which were factually non-consensual, whether violence was involved); by a greater repugnance for some offences than others (e.g., buggery); or by the assumption that some types of offenders may be more amenable than others to treatment (e.g., incest).

Both in relation to maximum sentences available and the lengths of the average sentences imposed, the findings reflect substantially different attitudes towards homosexual and heterosexual offenders having children as victims. In this regard, of the two offences having a maximum penalty of 14 years, the offence of buggery was more severely punished than the offence of incest. Of 32 incest offenders, 71.9 per cent were imprisoned having sentences averaging



25.7 months. In contrast, of the small number of offenders convicted of buggery, 87.5 per cent had been imprisoned and, on average, they had received sentences of 39.9 months.

As indicated in the findings of the National Police Force Survey, (Chapter 25, *Elements of the Offences*), the offences of indecent assault against males and females encompass a broad range of proscribed sexual acts with indecent assault against a male having a longer available sentence (10 years) than that available for indecent assault against a female (five years). Together, these two offences accounted for about half (48.5 per cent) of all convictions. While about the same proportion of both types of offenders had been imprisoned (indecent assault against a female, 56.8 per cent; indecent assault against a male, 51.5 per cent), the average length of sentences of offenders assaulting females was 7.7 months shorter than that of offenders assaulting males. **These findings, like those comparing sentences imposed for incest and buggery, leave no doubt that within the limits of the maximum sentences available, homosexual offenders having children as victims were dealt with more severely on sentencing than were heterosexual offenders.** The average lengths of the custodial sentences imposed against these two categories of sexual offenders contrast sharply with the findings given in Chapter 38, *Convicted Offenders*, which show that proportionately more heterosexual than homosexual offenders had committed more serious sexual acts, had more frequently threatened and physically forced victims, and had physically injured more children whom they had sexually assaulted. On the basis of these findings, there can be no doubt that sentencing practices are profoundly influenced by prevailing public and judicial attitudes, in some instances, apparently more so than by the actual elements of the sexual offences committed. On average, convicted homosexual offenders were generally less dangerous to victims than were convicted heterosexual offenders, yet the former received proportionately longer sentences than the latter in relation to the maximum penalties available.

The findings in Table 40.4 clearly indicate that **there is no self-evident rationale underlying the assignment of penalties to sexual offences proscribing similar types of sexual acts.** In the case of sexual intercourse with a female, the maximum sentences which could be imposed (when the study was conducted) ranged from two years (sexual intercourse by a guardian) to life imprisonment (rape). The maximum penalties for other acts involving vaginal penetration with a penis are: life imprisonment (sexual intercourse with a female under age 14); 14 years (incest); and 5 years (sexual intercourse with a female age 14 but under age 16). Contingent upon the charges laid, sexual intercourse committed by a family member, relative or a person in a position of trust to the child may invoke penalties of 2 years, 5 years, 14 years and life imprisonment.

The actual sentences imposed against offenders who had sexual intercourse with young female victims ranged from 9.5 months (sexual intercourse by a guardian) to life imprisonment (rape and sexual intercourse with a female

under age 14). Between these two categories, the average lengths of the sentences imposed for having sexual intercourse with a young female victim were: 28.6 months, sexual intercourse with a female age 14 but under age 16; and incest, 25.7 months. In the latter instance, as documented in Part V of the Report, *Child Protection Services*, the presumption often made is that incest offenders will benefit from treatment and other forms of ameliorative intervention. Comparable professional discretion does not appear to be as frequently invoked in the case of other offenders having committed similar sexual acts against children and youths.

In the Committee's judgment, these findings in conjunction with other evidence given in the Report leave no doubt that the existing provisions in the *Criminal Code* must be restructured to afford protection for sexually abused children based on a rationale which accounts for the sexual acts committed, the degree of danger involved (coercion, injuries), the child's age, and the type of association between the victim and the offender. The existing system of penalties is both irrational in its structure and in its application.

## Sexual Recidivism

The 179 convicted male child sexual recidivists for whom findings are given in Table 40.5 may have had more than one current and previous conviction for sexual offences. In some instances, offenders had lengthy records. In each instance, for example, an offender may have had concurrent or consecutive convictions for rape and indecent assault against a female. Where offenders had more than one current or previous conviction, the most serious offence committed (previous or current) was listed. On the basis of this classification, less than half (46.4 per cent) of the previous convictions for sexual offences of sexual recidivists were identical to their current convictions. Four types of offences — rape and attempted rape, indecent assault against a female, indecent assault against a male and indecent act — accounted for three in four (75.4 per cent) previous convictions. With one exception, that involving three cases of incest, where the level of congruence was relatively high between previous and current convictions, the offences in this category were vaguely phrased in relation to specifying the exact nature of the sexual acts proscribed. The offences for which over half of the previous and current convictions were comparable were: indecent assault against a female (59.3 per cent); indecent assault against a male (51.2 per cent); and indecent act (77.8 per cent).

The findings listed in Table 40.5 can be interpreted from two perspectives in relation to whether a progression occurs from minor to more serious sexual offences having been committed. Minor offences committed in the past, such as convictions under section 33 of the *Juvenile Delinquents Act* or for the offence of indecent act, may be considered relative to the nature of the offenders' subsequent convictions. A second approach entails a review of the previous convictions of offenders who were currently sentenced for serious offences (e.g., rape and attempted rape).

Table 40.5

**Previous and Current Convictions for  
Sexual Offences of Male Child Sexual Recidivists**

Current Conviction	Previous Conviction							
	Rape/ Attempted Rape	Indecent Assault Female	Incest	Buggery/ Gross Indecency	Indecent Assault Male	Indecent Act	J.D.A. sec. 33	Other Offences
Rape/Attempted Rape	8	11	—	2	2	1	1	2
Indecent Assault Female	6	35	1	3	2	7	3	2
Incest	—	1	2	—	—	—	1	—
Buggery/Gross Inde- cency	3	2	—	4	1	1	—	1
Indecent Assault Male	1	4	—	5	20	1	6	2
Indecent Act	—	2	—	—	1	14	—	1
J.D.A. sec. 33	1	—	—	1	2	—	—	—
Other Offences	2	5	—	—	1	1	1	6
TOTAL	21	60	3	15	29	25	12	14
								179

National Corrections Survey.



Twelve of the 179 sexual recidivists had previous convictions under section 33 of the *Juvenile Delinquents Act*. None was subsequently convicted exclusively under this statute. The 12 offenders' current convictions were for: rape (1); indecent assault against a female (3); incest (1); indecent assault against a male (6); and making obscene telephone calls (1).

A total of 25 sexual recidivists had previously been convicted for the offence of indecent act. Confirming the findings of the National Police Force Survey where it was found that for some offenders there was an association between committing acts of exposure and committing sexual assaults against children, over two in five (44.0 per cent) recidivists previously convicted of the offence of indecent act were later sentenced for sexually assaulting children and youths. The offences committed by this group included: rape (1); indecent assault against a female (7); gross indecency (1); indecent assault against a male (1); and living on the avails of prostitution (1).

About three in 10 sexual recidivists (29.6 per cent) currently sentenced for rape or attempted rape had previously been convicted for these offences. Two in five (40.7 per cent) had previously been convicted of indecent assault against a female. The previous offences committed by the remainder were: buggery (1); indecent assault against a male (2); gross indecency (1); indecent act (1); section 33 of the *Juvenile Delinquents Act* (1); and other (2) which included: sexual intercourse with a female under age 14; and living on the avails of prostitution.

As noted in the review of the research on sexual recidivism, a number of studies have concluded that few sexual offenders are recidivists and that among those having previous convictions there is no progression from minor to serious offences having been committed. In this regard, for instance, the 1965 U.S. Study of *Sex Offenders* concluded that the hypothesis that a sequence occurred was unsound.

"In our society there is a belief, so common as to constitute folklore, in the evolutionary sequence of behaviour<sup>27</sup> . . . Our data may be interpreted to prove that sex offenders do not as a rule commit offenses of increasing severity. The hypothesis of evolution from the trivial to the serious is not a sound one. On the other hand, by some strange irony, the men who are the most apt to resort to physical violence are those whose initial offenses would be judged as the least harmful to society — sexual activity with consenting minor and adult females and peeping.<sup>28</sup>

In summary, it appears that the offenders vs. children with multiple offenses generally repeat their original type of offense, relatively few begin using force, and a substantial minority commit what can be termed as nuisance offenses (including exhibition)."<sup>29</sup>

"There is a pronounced tendency among most sex-offender groups for the second offense to be of the same type as the first. In cases where more than two offenses have been committed there is a tendency for the use of force or threat to become less common in the third or subsequent offenses."<sup>30</sup>

**The Committee's findings do not support the conclusions of those research studies which found that sexual recidivism involving children as vic-**

**tims was low and that no progression occurs from minor to serious offences having been committed.** In the Committee's research, the highest level of congruence between previous and current convictions occurred in relation to vaguely phrased offences amenable to encompassing a wide range of proscribed sexual acts. Although in this instance previous and current offences may have been identical in terms of their classification, there is no surety that similar sexual acts were in fact committed. The apparently high level of correlation in these instances may well be spurious by virtue of subsuming dissimilar sexual acts under a single offence.

The findings of the National Police Force Survey indicate that there was extensive variation in the types of sexual acts committed in relation to the charges laid by the police (Chapter 25, *Elements of the Offences*). Comparable findings were obtained in the National Corrections Survey in relation to the types of sexual acts for which offenders were sentenced and the offences for which they were convicted. An instance of this variation is exemplified by the findings concerning 30 of the 695 convicted male offenders sentenced on the basis of sexual acts involving anal penetration with a penis. In the listing of convictions of all offenders in the survey, only eight, or 26.7 per cent, were convicted of buggery.

The Committee's findings concerning the level of congruence between previous and current convictions and whether there is a progression from minor to serious offences must be interpreted in light of the information obtained concerning this issue. Findings obtained exclusively from charges and convictions may be little better than quick-sand as a basis upon which to ground valid conclusions concerning the nature of the sequence of the offences committed. The information required to undertake a sufficient analysis of this issue includes: documentation for both current and previous offences of the sexual acts actually committed; the ages and circumstances of victims; the types of association between victims and offenders; whether threats and physical force were used; and the nature of the injuries sustained by victims. Despite undertaking a detailed review of the correctional records of convicted male child sexual offenders, the Committee found that information was not available for most offenders concerning the circumstances of many aspects of their previous sexual convictions.

The findings given in Chapter 38, *Convicted Offenders*, concerning sexual recidivists indicate that in relation to their current convictions: two in five (42.5 per cent) had committed acts of completed or attempted vaginal penetration with a penis and three in 10 (30.4 per cent) had committed acts of completed or attempted anal penetration with a penis; slightly less than half (45.9 per cent) had threatened or physically forced victims; and one in nine (10.7 per cent) had physically injured a victim. As noted, incomplete information was available concerning the circumstances of the previous sexual offences committed by these sexual recidivists. The findings clearly disprove, however, the conclusion that sexual recidivists constitute little or no danger to victims. In a substantial proportion of these offences, serious sexual acts were committed involving the use of threats and physical force.



When these findings are considered relative to those concerning the sequence of previous and current convictions (and allowing for the limitations noted in regard to information available about the former), then the findings of the National Corrections Survey suggest that a sequence occurs in the progression from minor to serious sexual offences being committed in which children and youths are victims. A high proportion of offenders previously convicted of minor offences (under section 33, *Juvenile Delinquents Act* and indecent act) was subsequently sentenced for more serious offences, and of those currently convicted of serious offences (rape, attempted rape), most had previously been sentenced for minor sexual offences.

In addition to the offenders having previous convictions for sexual offences, the findings indicate that over a third of the offenders in the National Corrections Survey (36.5 per cent) had previously been sentenced for *non-sexual offences*. Where similar information has previously been obtained, these findings are consistent with those of other research studies on sexual offenders. In these studies, however, non-sexual offences are typically excluded from the review of sexual recidivism on the grounds that they constitute qualitatively different types of sexual activity.

The 1957 British study of *Sexual Offences* reported that non-sexual recidivism "varied in the different classes. It was highest in the heterosexual group and lowest in the non-indictable homosexual group... the vast majority... [of sexual recidivists]... had previous convictions for offences against property and particularly for larceny and breaking and entering... It is, however, surprising to find that of sexual recidivists in the indecent exposure class who had previous convictions for non-sexual offences more than half had at least one conviction for breaking and entering..."<sup>31</sup>

The 1965 U.S. study of *Sex Offenders* also found that property offences had been frequently committed by offenders.

"Crimes against property represent the bulk of the offenses of the prison group; nearly half of their offenses were of this type; this finding is similar to that of other studies of criminals<sup>32</sup>... The only generalization to be drawn from the figures is that the aggressors are more inclined toward crimes against property than other groups, an inclination in keeping with the philosophy of taking what one wants be it property or sex."<sup>33</sup>

In the National Corrections Survey, the types of previous convictions for non-sexual offences committed by offenders were identified for over nine in 10 recidivists (92.6 per cent). These previous non-sexual offences included: assaults against the person (16.2 per cent); crimes against property (55.9 per cent) and other offences, e.g., breach of parole (27.9 per cent). Of the one in six offenders (16.2 per cent) previously convicted for assault, three in five in this group (57.9 per cent) were currently convicted for having committed heterosexual offences. Offenders currently sentenced for heterosexual offences accounted for 87.4 per cent of those having previous convictions for non-sexual offences.



Break-and-enter offences constituted three in four of the previous convictions (74.2 per cent) for offences involving property. Offences of this kind were committed equally by all types of persons subsequently sentenced for sexual offences against children and youths. While in this regard comparative Canadian information is not available for sexual offenders having adult victims or for those having committed non-sexual assaults against the person, it is unlikely that findings of this order occur by chance. It is evident that the frequency with which break-and-enter offences are committed by convicted male child sexual offenders is characteristic of persons engaging in this type of criminal activity.

The limited evidence available suggests that a proportion of the property offences committed by sexual offenders may have been sexually motivated crimes. D.J. West's indepth analysis of the previous break-and-enter convictions of 12 sexual offenders who were incarcerated in British Columbia found that in almost half of these cases, the motivation had been sexual assault, peeping or the theft of women's clothing.<sup>34</sup>

The Committee's findings presented in Chapter 38, *Convicted Offenders*, clearly show that **non-sexual recidivists sentenced for sexual offences against children and youths were consistently more dangerous than sexual recidivists. In comparison to the latter group, non-sexual recidivists committed more serious sexual acts, they more frequently threatened and coerced victims, and proportionately more of their victims were physically injured. In light of the available evidence, it appears that being criminally experienced, whether previous convictions were for sexual or non-sexual offences, is closely associated with a high level of risk to young victims of sexual offences.**

## Summary

1. One third of the offenders (37.7 per cent) had no prior criminal record. Two in three offenders (62.3 per cent) had previous convictions for sexual and non-sexual offences. One in four (25.8 per cent) was a sexual recidivist.
2. Three in five offenders (59.8 per cent) were given custodial sentences, a third (35.8 per cent) were given probation, and one in 23 (4.4 per cent) received other sentences.
3. For offences having higher penalties, the custodial sentences imposed were proportionately shorter relative to the maximum terms available than those imposed relative to offences having shorter maximum terms.
4. Where the maximum terms were similar, offenders committing acts of completed and attempted vaginal and anal penetration were given longer custodial sentences than offenders who had committed other types of sexual acts.
5. The average length of the custodial sentences imposed in relation to similar sexual acts having been committed (e.g., sexual intercourse) varied sharply.

6. Where the maximum terms were similar, homosexual offenders typically received longer custodial sentences than heterosexual offenders.
7. Less than half of the previous convictions for sexual offences of sexual recidivists were identical to their current convictions. A substantial proportion of recidivists had committed serious sexual acts and had threatened and physically coerced victims. The findings suggest that a sequence may occur in a progression from minor to serious offences committed by sexual recidivists.
8. One third of the offenders (36.5 per cent) had previous convictions for non-sexual offences. One in six of these offences had been an assault against the person and over half were crimes involving property.
9. Offenders currently sentenced for heterosexual offences accounted for seven in eight of those having previous convictions for non-sexual offences. Break-and-enter offences constituted three in four of the offences against property.

The Committee's findings on sexual recidivism differ from those of a number of other studies in regard to the extent of the problem, the gravity of the offences committed and the indication that there may be a progression from minor to serious offences having been committed. In the case of the present study, these differences may be accounted for by: the use of different research methods; the inclusion of offenders on probation and under custody of federal and provincial correctional services; and findings having been obtained about a substantial number of offenders having children and youths as victims.

Two in three of the convicted male child sexual offenders had previous convictions for sexual and non-sexual offences. No inferences can be drawn from the findings of the survey concerning the efficacy of the assistance and treatment which may have previously been provided to recidivists. **The findings leave no doubt that a substantial number of the offenders had previously been in conflict with the law, and for this group, it is apparent that the prior imposition of criminal sanctions was ineffective in deterring or preventing them from subsequently committing sexual offences against children.**

In their long-term follow-up study of 184 convicted British sexual offenders convicted of rape, incest and unlawful sexual intercourse against girls under 13 years-old, Soothill and Gibbens found that:<sup>35</sup>

"The most important feature to emerge from this study is the value of a long-term follow-up and of a carefully calculated measure of periods at risk, for by this procedure there is a clear demonstration that a sizeable proportion of these offenders are reconvicted a long time after the usual follow-up of three to five years. Furthermore, the reconvictions which occur after this considerable lapse of time are often serious sexual and/or violence offences."<sup>36</sup>

"We could estimate that about half of this sample of sexual offenders against young girls would be reconvicted by the end of a follow-up period of 23 years (many of these will be ordinary property offenders whose sexual offence was quite atypical. About one-quarter of the sample will be reconvicted of a sexual or violence offence (usually a rather serious one))."<sup>37</sup>



These researchers concluded that “few are likely to deny the relevance of the recidivism rates of sexual offenders in considering appropriate penal policy in relation to sexual offences<sup>38</sup> . . . The present study endorses the point that ‘a past career of crime is a decisive factor of recidivism’ ”<sup>39</sup>. The Committee strongly concurs with these conclusions. **The findings of the National Corrections Survey, although limited in documenting the full dimensions of sexual recidivism, confirm the need for long-term assessment and follow-up of convicted child sexual offenders and the development of penal policies appropriate for their treatment and management.**

Both the findings of the National Corrections Survey and the National Police Force Survey show that considerable professional discretion was exercised respectively in the imposition of sentences and the laying of charges. In the application of the criminal law, it may be argued that having considerable discretionary latitude is essential in order to afford the requisite flexibility in dealing with the special circumstances inherent in the broad range of criminal activities coming to the attention of enforcement authorities. To the extent that such professional discretion is exercised, however, it may function operationally to establish penal policies and to void the intentions of legislators.

In relation to the sentencing of offenders, the findings of the National Corrections Survey document the dimensions of the discretionary decisions taken which, at face value, vary substantially from the available sentencing provisions of the criminal law. Within available maximum sentences, there was consistent and sharp variation in relation to the sentences imposed for different sexual offences. This variation occurred even where similar sexual acts had been committed. In this regard, for instance, the average lengths of the custodial sentences imposed for offenders convicted of sexual intercourse with a female age 14 but under age 16 was 28.6 months. This offence has a maximum penalty of five years’ imprisonment. In contrast, offenders convicted of incest, an offence having a maximum term of 14 years, were sentenced, on average, to 25.7 months’ imprisonment.

The Committee’s findings are comparable to those reached in the 1983 Report on *Sentencing Practices and Trends in Canada* commissioned by the federal Department of Justice. On the basis of its review, this study concluded that:

“Nonetheless, the differences in sentences that were found can be taken as sufficient evidence that one of two problems exist for policy makers. *First*, if it is assumed that no unwarranted disparity exists in sentencing practices, then the undisputed evidence of sentencing differences for cases convicted of offences under the same section [66] of the *Code* must imply that a considerable range of behaviour is encompassed within each section of the *Code*. Given the magnitude of the differences in sentences—and therefore (under this assumption) offences—for convictions within different sections of the *Code*, it becomes doubtful that the *Code* sections sufficiently discriminate among different criminal acts. This problem is especially problematic given the present structure of the *Code* regarding provisions for sentences [67], a structure that assigns specific sentences to offences as defined in specific sections. If the different sections did not differentiate among different criminal



behaviours in an adequate manner, it would be extremely unlikely that the sentences attached to those same sections would adequately differentiate among those behaviours either.

The implications for Criminal Code Review are obvious. Serious attention must be given either to altering the offence descriptions in the different sections of the *Code* to define more narrow ranges of criminal behaviour, or to altering the structure of those parts of the *Code* that speak to sentencing. An example of the latter approach would be to develop a separate section of the *Code* that deals with the general issues and facts that should be considered in sentencing, issues and facts that would include, but would not necessarily be limited to, the description of the offence as contained in other sections."<sup>40</sup>

The 1983 Report on *Sentencing Practices and Trends in Canada* makes the assumption that the sentences imposed are logically related to the behaviours subsumed in the offences. The Committee's findings leave no doubt that, in relation to sexual offences against children resulting in charges being laid or convictions imposed, this assumption is invalid.

In considering this issue, the Committee believes that the answer is not to develop a separate sentencing section of the *Criminal Code*. In relation to sexual offences committed against children, the Committee believes that, where possible, the provisions in the criminal law should be act-specific in the formulation of the offences, and connect the offences and the sentences in a rational manner. The Committee's recommendations to achieve these purposes are specified in Chapter 3 of the Report.

## References

### Chapter 40: Recidivism

- <sup>1</sup> Canada. *Report of the Royal Commission to Investigate the Penal System of Canada*. Ottawa: King's Printer, 1938, p. 214.
- <sup>2</sup> *Ibid.*, p. 174.
- <sup>3</sup> Canada. Department of Justice. *Report of a Committee Appointed to Inquire into the Principles and Procedures followed in the Remission Service of the Department of Justice of Canada*, Ottawa: Queen's Printer, 1956, p. 48.
- <sup>4</sup> Mohr, J.W., R.E. Turner and M.B. Jerry, *Pedophilia and Exhibitionism*. Toronto: University of Toronto Press, 1964, p. 82.
- <sup>5</sup> *Ibid.*, p. 85.
- <sup>6</sup> *Ibid.*, p. 156.
- <sup>7</sup> Gigeroff, A.K., J.W. Mohr and R.E. Turner, Sexual Offenders on Probation: II. Heterosexual Pedophiles. *Federal Probation*, 32 (4): 19, 1968.
- <sup>8</sup> *Ibid.*, p. 21.
- <sup>9</sup> Radzinowicz, L., *Sexual Offences. A Report of the Cambridge Department of Criminal Science*. Volume IX. London: MacMillan and Co., 1957, pp. 156-57.
- <sup>10</sup> Canada. *Report of the Royal Commission on the Criminal Law Relating to Criminal Sexual Psychopaths*. Ottawa: Queen's Printer, 1958, p. 70.
- <sup>11</sup> *Ibid.*, p. 66.
- <sup>12</sup> Mohr, J.W. and M. Wildridge, *Sexual Behaviour and the Criminal Law*. Part III. Rape and Attempted Rape; Part IV. Indecent Assault on a Female; Children Age 12 and Under; 13-19; Adult Females; Part VI. Indecent Act; Part VIII. Indecent Assault on a Male; Part IX. Gross Indecency. Toronto: Forensic Clinic, Toronto Psychiatric Hospital, 1965-69 (mimeo).
- <sup>13</sup> Gebhard, P.H., J.H. Gagnon, W.B. Pomeroy and C.V. Christenson, *Sex Offenders: An Analysis of Types*. New York: Harper and Row, 1965, p. 811.
- <sup>14</sup> *Ibid.*, p. 711.
- <sup>15</sup> McCaldon, R.J. Rape, *Canadian Journal of Corrections*, 9: 37-59, 1967.
- <sup>16</sup> *Ibid.*, p. 46.
- <sup>17</sup> *Ibid.*, p. 56.
- <sup>18</sup> Canada. Department of the Solicitor General. *Report of the Canadian Committee on Corrections*. Ottawa: Queen's Printer, 1969.
- <sup>19</sup> Searle, C.A., *A Study of Sexual Offenders in Canada and a Proposal for Treatment*. Canada: Canadian Penitentiary Service, 1974 (mimeo), p. 19.
- <sup>20</sup> Christie, M.M., W.L. Marshall and R.D. Lanthier, *A Descriptive Study of Incarcerated Rapists and Pedophiles*, Kingston: Canadian Penitentiary Services, 1977 (mimeo), p. 10.
- <sup>21</sup> *Ibid.*, p. 12.
- <sup>22</sup> Wormith, J.S., *A Survey of Incarcerated Sexual Offenders*, University of Saskatchewan (mimeo), 1982.
- <sup>23</sup> *R. v. Head* (1970) 1 C.C.C. (2d) 436 (Sask. C.A.).
- <sup>24</sup> *R. v. Walsh* (1979) 10 C.R. (3d) 5-30 (Que. S.C.).
- <sup>25</sup> *R. v. Fuller* (1981) 21 C.R. (3d) 301 (B.C.C.A.).
- <sup>26</sup> *R. v. Dawson and Williams*, reported November 3, 1981 (Ont. C.A.).

- <sup>27</sup> Gebhard, P.H. et al., *op. cit.*, p. 712.
- <sup>28</sup> *Ibid.*, p. 718.
- <sup>29</sup> *Ibid.*, p. 714.
- <sup>30</sup> *Ibid.*, p. 719.
- <sup>31</sup> Radzinowicz, L., *op. cit.*, pp. 166-67.
- <sup>32</sup> Gebhard, P.H., et. al., *op. cit.*, 703.
- <sup>33</sup> *Ibid.*, p. 703.
- <sup>34</sup> West, D.J., C. Roy and F.L. Nichols, *Understanding Sexual Attacks*, London: Heinemann, 1978.
- <sup>35</sup> Soothill, K.L. and T.C.N. Gibbens, Recidivism of Sexual Offenders: A Re-appraisal, *British Journal of Criminology*, 18: 267-276, 1978.
- <sup>36</sup> *Ibid.*, p. 274.
- <sup>37</sup> *Ibid.*, p. 275.
- <sup>38</sup> *Ibid.*, p. 267.
- <sup>39</sup> *Ibid.*, p. 274.
- <sup>40</sup> Canada. Department of Justice. *Sentencing Practices and Trends in Canada*. Ottawa, 1983. Volume 1, pp. 57-58.



## Chapter 41

# Dangerous Sexual Offenders

On the basis used to identify other convicted child sexual offenders, Correctional Service Canada made available to the Committee the records of all convicted persons designated as dangerous offenders who had committed sexual offences. A legal review of the statutory provisions concerning persons who on sentencing are found to be dangerous is given in Chapter 37, *Sentencing*. In this chapter, research information is given concerning the full listing of all persons who on February, 1982 were designated as 'dangerous' child sexual offenders; their situation is compared to that of other convicted male child sexual offenders documented in the National Corrections Survey.

As noted in Chapter 36, the computerized federal correctional records information system was developed in relation to the administration of inmates in custody or persons who are under supervision. This system does not contain information concerning the victims of crime. This information, however, is contained in the detailed dossiers maintained for each convicted offender. When these records were reviewed, it was found that there were 114 offenders serving indefinite sentences, of whom 84 had been convicted of having committed sexual offences. Of the latter group, 62 offenders found to be dangerous had been convicted for sexual offences in which children and youths had been victims.

**In light of these findings, it is evident that the statutory provisions pertaining to persons found to be dangerous are used extensively in relation to convicted male child sexual offenders who constituted over half (54.3 per cent) of all offenders in the country serving indefinite sentences. Dangerous sexual offenders constituted three in four (73.7 per cent) of all males serving these sentences, and within this group, three in four (73.8 per cent) had been convicted of sexual crimes against young persons.**

In its review of previous legislative and advisory reports<sup>1-3</sup> and research studies, the Committee found that these sources provided a partial basis for purposes of historical comparison. However, despite the high proportion of offenders in these categories having children and youths as victims, none of these studies had specifically considered dangerous offenders who had been convicted of child sexual abuse. Typically, the available reports and studies had dealt with the rationale and justification of the special legal provisions or with

the management, treatment and parole of these offenders. Although in comparison to all convicted offenders the group designated as 'dangerous' is small, the research focussing upon their experience and situation has dealt with only a handful of these cases. The Committee knows of no Canadian study that has documented completely or in detail who dangerous child sexual offenders are, or that has compared them in relation to the elements of the offences committed with other convicted child sexual offenders.

While there is grave public concern about the need for protection for children from dangerous child sexual offenders, there is an information vacuum about the actual utility of these special legal provisions in relation to achieving their intended purpose. While the protection of the public is assured in relation to convicted persons sentenced to indeterminate periods in custody, it is unknown how many other convicted offenders not having this designation may have committed similar offences, may be equally or more dangerous, or may be handled just as effectively by means other than invoking the special provisions pertaining to dangerous offenders.

Sharply contrasting opinions have been voiced concerning the need and utility of the legal provisions pertaining to dangerous sexual offenders. On the one hand, there is a deeply rooted public concern that these offenders must be severely punished and that the protection of children must be assured by keeping these convicted offenders in custody until it can be shown that they are of no further danger to the community. On the basis of this perspective, it is held that these offenders are brutal and sadistic and that they should be even more harshly dealt with than they are at the present time.

In contrast with the advocacy of stern punishment for these offenders, persons espousing a treatment perspective have concluded that while few child sexual offenders suffer from mental illness, a majority have character disorders and would benefit from counselling and training in relation to adapting to life in the community. In relation to those offenders who are deemed to be dangerous, an unresolved dilemma in this regard is the absence of sufficiently firm information permitting the accurate assessment and provision of appropriate treatment for these persons. The observations made by Marcus and Conway resulting from their assessment of dangerous sexual offenders in custody in British Columbia in 1963-64 still appear to be valid.

"The present state of scientific knowledge regarding the causes and alleviation of sexual psychopathy is so very limited, and the hazard to the community of a wrong or precipitate decision to release such an offender is so great, that it is rarely indeed that treatment personnel or parole authorities can decisively recommend release. They are not insensitive to the position of the dangerous sexual offender, but responsibility to the public, plus sheer lack of knowledge, makes their caution inevitable."<sup>4</sup>

In addition to the retributive and treatment perspectives, another viewpoint maintains that the legal provisions pertaining to dangerous sexual offenders fail to achieve their intended purpose, that they impose unduly harsh punishment, and that they are generally misapplied to persons who are weak and



inadequate and who are likely to pose little danger to the community. From this perspective, it is maintained that the protection of the public would be equally well served by the provision of management and treatment procedures afforded other convicted sexual offenders.

These concerns have been raised by Greenland who concluded on the basis of reviewing 17 dangerous sexual offenders in custody in Ontario penitentiaries in the early 1970s that:

“Only about three of the 17 had been dangerous in the sense of seriously threatening the life or safety of others. The other men were apparently guilty of grossly offensive and indecent behaviour but were not physically violent. In view of this, the practice of sentencing pedophiles and exhibitionists to years of incarceration can hardly be justified. The injustice is compounded when these inmates are also likely to experience harsh and degrading treatment and — in one case — a brutal death . . . the public are being cruelly deceived into believing that the law protects them and their children from assault by vicious sexual criminals. Dangerous sexual offender legislation does nothing of the kind. What it does — often in a mockery of justice — is to give the public a false sense of security by incarcerating virtually for life in conditions of appalling degradation, a pathetic group of socially and sexually inadequate individuals.”<sup>5</sup>

The Committee is appraised of the complexity of the difficulties involved in reaching an assessment of what types of behaviour may constitute ‘dangerousness’ and of the even greater uncertainty that is entailed in predicting the likelihood that offenders will or will not be dangerous upon their release to the community. In considering these crucial and profound matters, however, it appears that little attention and effort have been devoted to the documentation either of who these offenders are, the nature of the injuries inflicted on victims, and the assessment of their social circumstances and mental state, or to the elements of what it is that constitutes dangerous behaviour. In the absence of even rudimentary information of this kind, it is not apparent how any adequate assessment can be made of the operation and efficacy of these special statutory provisions, not just in relation to dangerous child sexual offenders but with respect to all types of convicted offenders having this designation.

## Case Studies

Preceding the presentation of research findings about all convicted dangerous child sexual offenders who were in custody or under supervision effective February, 1982, four case studies are given which describe the circumstances of the offences committed and which demonstrate the principles of sentencing involved as they were applied by the courts in finding these offenders to be dangerous.

### *Case Study 1: R. v. Milne<sup>6</sup>*

The accused was charged with five counts of gross indecency and pleaded guilty to each. The complainants were two males aged 16, one aged 14 and one 13 year-old. Milne met the boys on the street or through acquaintances,



and invited them to his home or to a houseboat where he gave them alcohol and showed them pornographic pictures. The accused proceeded on these occasions to fondle the boys' genitals, masturbate them and then engage them in acts of fellatio; the accused also had nude photographs taken of himself and the boys. At no time were the boys forced to participate in these acts. Evidence indicated that the accused held out the promise to the boys that they could earn money through his sale of the nude photographs.

On the application of the Crown, the trial judge declared the accused to be a dangerous sexual offender pursuant to section 688 of the *Code*. The judge took note of the fact that Milne, a homosexual for his entire adult life, had been convicted on three prior occasions of having indecently assaulted male persons; he also had been convicted of seven non-sexual offences. The trial judge further observed that none of the complainants had suffered physical injury as a result of the offences and that Milne "was not a vicious, aggressive or hostile person, but was rather a mild and insecure man."

The trial judge imposed a sentence of indeterminate length. Milne appealed on the grounds that he did not meet the necessary requirements set forth in section 688 for being declared a dangerous sexual offender and that the judge erred in passing an indefinite sentence.

The Court of Appeal, in summarizing medical testimony given at trial, held that, without treatment, Milne was likely to continue committing offences such as those of which he was convicted, but that he might be rehabilitated if he received proper medical care. It was conceded by Milne's counsel that the offender had committed a serious personal injury offence, and that, in his conduct in sexual matters, he had demonstrated a failure to control his sexual impulses. The court held that notwithstanding his prospects for rehabilitation, the offender, by his conduct in sexual matters, had shown a likelihood of causing future injury, pain or other evil to other persons through failure to control his sexual impulses. The court, in reaching this conclusion, relied on a statement made by the Alberta Court of Appeal in *R. v. Dwyer* (1977), 34 C.C.C. (2d) 293 at 300, to the effect that protection of the public must be the primary consideration in dealing with an application under section 688. The court upheld the declaration that Milne was a dangerous sexual offender. In reference to the indeterminate sentence, the court held that the trial judge had properly exercised his discretion in imposing such a sentence. Accordingly, the offender's appeal was dismissed.

#### *Case Study 2: R. v. Langevin*<sup>7</sup>

Langevin pleaded guilty to a charge of rape. The complainant was a 12 year-old girl. Langevin had been granted a weekend pass from the Guelph Correctional Centre where he had been serving a sentence of two years less a day. The 25 year-old offender grabbed the complainant as she was walking home, punched her on the forehead, forced her into a car that he had rented and drove her into a field where he made her fellate him and then proceeded to have vaginal and anal intercourse with her. Aside from minor physical injuries, the girl suffered psychological harms which were enumerated as follows by her mother at trial:

... the child who had always been a good sleeper, now found difficulty in sleeping, and when she did she woke up screaming ... her appetite was not as good and ... she had lost from 16-20 lbs. over a month ... she seemed to shower and wash twice a day ... her marks at school dropped considerably ... she would not go anywhere after dark unless someone was with

her . . . she doesn't trust people anymore, especially men, and . . . she draws back even from her own father.

Following Langevin's conviction, the Crown applied to have him declared a dangerous sexual offender under sections 688 (a)(i), 688(a)(iii), and 688(b) of the *Code*.

The Crown called a young woman who testified that the offender had raped her in 1977 when she was 15 years-old. The circumstances of the earlier attack were similar to those of the rape for which Langevin was currently convicted. In both incidents, the victims had been subjected to forced acts of anal and vaginal intercourse. The offender was convicted on a charge of indecent assault on a female in connection with the earlier offence. In addition, the offender's criminal record included several convictions for theft and breaking-and-entering.

In considering the Crown's application, the court held that the offender had committed a serious personal injury offence as defined by section 687(a), and that the similarities between the two attacks established a pattern of repetitive behaviour on his part. The court also found that, in processing from acts of rape to buggery, Langevin had shown a failure to restrain his behaviour. The court then considered psychiatric evidence which indicated that Langevin had an abnormally high interest in pubescent females, and that unless he made "some very dramatic attempt to change, the likelihood of similar occurrences is probably high". On the basis of this testimony and Langevin's past conduct, the court concluded that there existed a likelihood of his "causing death or injury to other persons or inflicting severe psychological damage upon other persons, through failure in the future to restrain his behaviour". Concerning the Crown's submission that the prisoner's conduct fell within the ambit of section 688(a)(iii), the court ruled that the rape was so brutal as to compel it to conclude that Langevin was not likely in the future "to be inhibited by normal standards of behavioural restraint". Finally, with respect to the submissions relating to section 688(b), the court held that Langevin had shown a failure to control his sexual impulses, and that there was a likelihood of the offender causing injury, pain or other evil to other persons through failure in the future to control his sexual impulses.

In considering whether to exercise his discretion to declare Langevin a dangerous offender, the judge noted that Langevin was a threat to others, and that "weighing the interests of the general public against that [sic] of the offender, it would be flying in the face of all common sense" not to declare Langevin a dangerous offender.

Having made the declaration, the court finally turned to the question of duration of sentence. A number of factors inclined the judge to impose a sentence of life imprisonment, namely:

. . . the prior sexual offence of the offender, his aggressiveness and low controls, his penchant for alcohol, my findings that he is likely to fail in restraining his behaviour in the future, that he is in the future unlikely to be inhibited by normal standards of behavioural restraint, and that he is unlikely in the future to control his sexual impulses to the harm of others, that he constitutes a threat to the life, safety or physical or mental well-being of others, and . . . testimony that the offender's sexual problem might not be alleviated until he was past 30 or 40 or maybe beyond that . . .

In the result, however, the court imposed an indeterminate sentence, reasoning that Langevin's:

... motivation to accept [psychiatric] treatment would be greater once he considers the advantages afforded him by the periodic reviews of his condition provided for in Section 695.1 of the *Code*.

#### *Case Study 3: R. v. Robertson<sup>8</sup>*

The accused carried a three year-old girl from her parent's yard to an abandoned house and there sexually molested her. For this act, he was convicted of kidnapping. The accused also was convicted of indecently assaulting an infant male and upon the Crown's application, was declared to be a dangerous sexual offender under section 688 of the *Code*. For the kidnapping, the accused received a 12 year sentence; as a dangerous sexual offender, he was sentenced to an indeterminate period of imprisonment. The accused appealed from the declaration that he was a dangerous sexual offender.

Citing psychiatric evidence adduced at trial, the court dismissed the appeal. The evidence indicated that the accused was a psychopath who would represent a danger to the public if released. The accused had a record of convictions for related offences. As justification for the indeterminate sentence, the court noted that the accused had never responded positively to penal discipline in the past (i.e., that, upon the termination of a fixed sentence, the accused would remain a danger to the public).

#### *Case Study 4: Hall v. The Queen<sup>9</sup>*

The accused was charged with the indecent assault of a 17 year-old female. Upon pleading guilty, the accused was convicted and, upon the Crown's application, declared to be a dangerous sexual offender. He received an indeterminate sentence. Evidence at trial indicated that the accused was a severely retarded man, with an intelligence quotient of 53 and the mental age of a nine or 10 year-old. In addition, it was shown that the accused's testosterone level was several times that of a normal male; the combined influence of these factors made the accused unable to control his sexual urges and to prevent himself from attacking women (he had a lengthy history of such attacks).

At trial, psychiatric testimony was given to the effect that treatments with depo provera would render the accused more docile and controllable. The trial judge, however, declined to speculate upon the possible effectiveness of a treatment "which is as yet unauthorized and unavailable in this jurisdiction".

The accused's appeal against sentence was dismissed. McDermid J.A. held that while the trial judge was entitled to consider the possible effects of treatment on a dangerous offender, such consideration was not binding upon his decision. In the present case, the trial judge had given thought to depo provera treatments and, properly, had decided against making the prospect of such treatments a factor in sentencing. McDermid J.A. noted that the accused's case was an unfortunate one and hoped:

That the authorities will deal with him in some manner other than confining him in a normal penitentiary with normal prisoners who may mistreat him. However, this is a matter over which the Courts have no control. Confined he must be while he is a threat and has such a history of violent attacks on women.



In a separate judgment, Lieberman J.A. agreed that the prisoner must be confined indefinitely but lamented the fact that there appeared to be no correctional facility capable of providing a humane environment for him. Lieberman J.A. called for the establishment of special facilities for mentally retarded offenders.

## Geographic Distribution

The 1969 *Canadian Committee on Corrections* (Ouimet Report) listed the locations where both habitual and dangerous sexual offenders had been sentenced.<sup>10</sup> In each instance, there was a sharp regional imbalance between where these offenders had been sentenced and the relative distribution of the Canadian population. The findings from the 1969 *Ouimet Report* for dangerous sexual offenders are listed in Table 41.1. When these are considered in conjunction with the findings of the 1974 Canadian Penitentiary Service Survey of Sexual Offenders and the 1982 National Corrections Survey conducted by the Committee, it is evident that there are sharp and persistent regional disparities in relation to the application of the statutory provisions pertaining to convicted offenders who have been found to be dangerous by Canadian courts.

**Table 41.1**  
**Regions Where Accused Were Found to be Dangerous Sexual Offenders**

Region of Canada	1968		1973		1982	
	Dangerous Sexual Offenders <sup>1</sup> (n=57)	Distribution of Population <sup>2</sup>	Dangerous Sexual Offenders <sup>3</sup> (n=66)	Distribution of Population <sup>2</sup>	Dangerous Child Sexual Offenders <sup>4</sup> (n=62)	Distribution of Population <sup>2</sup>
	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent
Maritimes	3.5	9.7	6.1	9.5	4.8	9.1
Quebec	7.0	28.6	10.6	27.6	8.0	26.3
Ontario	35.1	35.1	30.3	35.9	32.3	35.4
Prairies	14.0	16.7	7.6	16.3	22.6	17.6
British Columbia, Yukon, N.W.T.	40.4	9.9	45.4	10.7	32.3	11.6
TOTAL	100.0	100.0	100.0	100.0	100.0	100.0

<sup>1</sup> Canada. Department of the Solicitor General. *Report of the Canadian Committee on Corrections*, Ottawa: Queen's Printer, 1969. Full listing of dangerous sexual offenders.

<sup>2</sup> Canada. Statistics Canada. *Estimates of Population for Canada and the Provinces*, June 1, 1983. Ottawa: Supply and Services Canada, 1983.

<sup>3</sup> Searle, C.A., *A Study of Sexual Offenders in Canada and a Proposal for Treatment*, Ottawa: Canadian Penitentiary Service, 1974 (mimeo). Full listing of all dangerous sexual offenders. The listing of cases for the Prairies does not accord with the census listing for Manitoba, Saskatchewan and Alberta.

<sup>4</sup> *National Corrections Survey*. Full listing of all dangerous child sexual offenders.

In the 1969 Report of the *Canadian Committee on Corrections*, it was found that while the Maritimes and Quebec comprised approximately two-fifths of the population (38.3 per cent), only about one in 10 persons (10.5 per cent) then designated dangerous sexual offenders had been sentenced by courts located in these provinces. In this regard, the proportional distribution of sentenced offenders and the relative size of the population for Ontario and the Prairies were generally comparable. However, while the population of British Columbia, the Yukon and the Northwest Territories constituted a tenth of the Canadian population (9.9 per cent), two-fifths of the accused (40.4 per cent) found to be dangerous sexual offenders had been sentenced by courts in this region.

With respect to the geographical distribution of the sentencing of habitual offenders, the 1969 *Ouimet Report* noted that "the present habitual offender legislation has been applied very unevenly across Canada . . .".<sup>11</sup> In relation to the 57 persons then in custody who were dangerous sexual offenders, the 1969 *Ouimet Report* noted that the pertinent legislation "appears to have been more uniformly enforced across Canada than the present habitual offender legislation, although it is obvious that substantial disparity exists with respect to its enforcement in different parts of Canada".<sup>12</sup> On the basis of these findings and drawing upon two previously completed reports that had reviewed respectively the situation of less than a third and a half of offenders who had been found to be dangerous, the 1969 *Ouimet Report* recommended that the "dangerous sexual offender legislation be repealed and replaced by dangerous offender legislation".<sup>13</sup>

In the 1974 Survey undertaken by C.A. Searle, 66 of 495 convicted sexual offenders who were then in custody or under supervision of federal correctional services had been designated by the courts as dangerous offenders.<sup>14</sup> In reviewing where the accused had been sentenced, the regional divisions adopted in the administration of the Canadian Penitentiary Service were used. Since these do not match exactly the classification of the geographical distribution of the population for the four western provinces, the Yukon and the Northwest Territories given in Table 41.1, the comparison between the sentences given and the proportional distribution of the population for these parts of the country is partially inaccurate. Allowing for this discrepancy, however, the findings of the 1974 Survey are generally of the same order as those documented in the 1969 *Ouimet Report*.

The Committee's findings concerning where persons were found to be dangerous offenders differ from those of the two earlier studies since information in the more recent study was only obtained in regard to those accused having children and youths as victims. Despite this difference, and in light of the fact that a sizeable majority of all dangerous sexual offenders (73.8 per cent) were convicted of sexual offences against children, it is not surprising that the trends previously documented were still found to be occurring. One in eight (12.8 per cent) dangerous child sexual offenders had been sentenced by courts in the Maritimes and Quebec. In contrast, these five eastern provinces in 1982 constituted over a third of the Canadian population (35.4 per cent).



In the case of both Ontario and the three Prairie provinces, there was a closer matching between the proportional distribution of dangerous child sexual offenders and the relative distribution of the population living in these regions. In contrast, while the population of British Columbia, the Yukon and the Northwest Territories constituted 11.6 per cent of the country's population in 1982, about a third (32.3 per cent) of all dangerous child sexual offenders had been sentenced by courts in this region.

Within these regional groupings, it is evident that there are three jurisdictions which account for the majority of the applications to court in which offenders are found to be dangerous. Four in five dangerous child sexual offenders (79.0 per cent) had been sentenced in Ontario, Alberta and British Columbia. None had been sentenced in Newfoundland, New Brunswick, the Yukon and the Northwest Territories. A total of five offenders had been sentenced in Quebec in contrast to 20 persons who were found to be dangerous in Ontario.

Although two in three of the surveys dealt with all dangerous sexual offenders, and in the case of the 1974 Survey there was not an exact matching in relation to the designation of geographical regions, **the findings of the three surveys completed between 1968 and 1982 clearly document the occurrence of sharp and persistent regional disparities in the application of dangerous offender provisions to persons convicted of sexual offences.** It is evident that these provisions are less often applied in the Maritimes and Quebec, and that consistently, a disproportionate number of persons receive these sentences in British Columbia.

In the National Corrections Survey, information concerning the location of where the offences had been committed was also obtained in relation to whether the offences had involved offenders and victims living in the same households. In almost a quarter (23.7 per cent) of the offences committed by 633 convicted males, the offender and the victim had lived in the same household. In contrast, only three of the offences committed by dangerous offenders (4.8 per cent) had occurred under similar circumstances. When findings concerning both the location where the offence was committed and the type of association between victims and offenders are considered together, it is evident that few dangerous offenders had had a close association with their victims before committing their offences. Unlike the victims of other male offenders, most of whom had known their assailants, the majority of dangerous offenders were strangers.

## Sex and Age of Victims

The sex and age distribution of the victims of the 62 dangerous child sexual offenders differs markedly from that of the other 633 convicted male child sexual offenders documented in the National Corrections Survey. About a third of the victims (32.3 per cent) of the former group were males, slightly less



than two-thirds (62.9 per cent) were females and the remainder consisted of three offenders having multiple victims (4.8 per cent). In comparison with the 633 other convicted male child sexual offenders, among the victims of dangerous offenders, there was proportionately almost a doubling of male victims and about a fifth fewer female victims.

Classification of Convicted Child Sexual Offenders	Male Victims		Female Victims		Multiple Victims		Total	
	No.	%	No.	%	No.	%	No.	%
Dangerous sexual offenders	20	32.3	39	62.9	3	4.8	62	100.0
Other convicted child sexual offenders	109	17.2	506	79.9	18	2.8	633	99.9*
TOTAL	129	18.6	545	78.4	21	3.0	695	100.0

\*rounding error

In relation to the age distribution of the victims of the two groups of offenders, dangerous offenders in comparison to others had proportionately almost twice as many young female victims and about a third fewer young male victims. The sex and age distribution of the victims of dangerous offenders indicates, as subsequent findings document further, that there were two separate and distinctive sub-groupings of dangerous child sexual offenders. In relation to other male child sexual offenders, there were proportionately more dangerous offenders having committed homosexual offences and, on average, their victims were older. In contrast, there were proportionately fewer dangerous offenders who had committed heterosexual offences but considerably more of their female victims were young girls who were 11 years-old or younger.

**Table 41.2**  
**Ages of Victims of Dangerous Child Sexual Offenders**  
**and Other Convicted Male Child Sexual Offenders**

Ages of Victims	Male Victims		Female Victims		Multiple Victims	
	Dangerous Offenders (n=20)	Other Offenders (n=109)	Dangerous Offenders (n=39)	Other Offenders (n=506)	Dangerous Offenders (n=3)	Other Offenders (n=18)
	%	%	%	%	%	%
Under age 7	5.0	11.9	25.6	12.0	66.7	22.2
7 – 11 years	25.0	35.8	35.9	21.8	33.3	61.1
12 – 13 years	25.0	18.3	15.4	16.7	—	—
14 – 15 years	30.0	13.8	7.7	12.3	—	5.6
16 years and older	—	11.0	10.3	19.2	—	—
Not reported	15.0	9.2	5.1	18.0	—	11.1
TOTAL	100.0	100.0	100.0	100.0	100.0	100.0

*National Corrections Survey.*

# Types of Sexual Acts

On average, dangerous child sexual offenders had committed 1.4 sexual acts against victims. Offenders in this category having male victims had committed the fewest (1.3) followed by those having female victims (1.5) and those having multiple victims (2.0).

Of dangerous offenders having female victims, two in five (38.5 per cent) had committed rape and about one in eight (12.8 per cent) had attempted to commit rape. A quarter of the female victims (25.6 per cent) had had their genital parts touched, about one in six (15.4 per cent) had experienced oral-genital contacts and about one in five (20.5 per cent) had been exposed to by the offender.

Among the 20 male victims of dangerous offenders, one in four (25.0 per cent) had sustained anal penetration by a penis and there was one instance where an act of this kind had been attempted. About a third of the male vic-

**Table 41.3**  
**Types of Sexual Acts Committed Against Victims**  
**by Dangerous Child Sexual Offenders**

Type of Sexual Act	Male Victims (n=20)	Female Victims (n=39)	Multiple Victims (n=3)
	Non-Accum. %	Non-Accum. %	Non-Accum. %
Fondling, touching breasts, buttocks	10.0	7.7	33.3
Fondling, touching genital area	35.0	25.6	33.3
Kissing mouth, other parts of body	5.0	7.7	33.3
Oral — genital	15.0	15.4	33.3
Oral — anal	5.0	—	—
Attempted vaginal penetration with penis	—	12.8	33.3
Vaginal penetration with penis	—	38.5	—
Vaginal penetration with finger and/or object	—	2.6	—
Attempted anal penetration with penis	5.0	—	—
Anal penetration with penis	25.0	5.1	—
Anal penetration with finger and/or object	5.0	—	33.3
Bestiality	—	2.6	—
Exposed genitals	10.0	12.8	—
Exposed nude body	10.0	7.7	—

tims (35.0 per cent) had had their genitals touched, one in five (20.0 per cent) had been exposed to and about one in six (15.0 per cent) had had an oral-genital contact. Of the offenders having multiple victims, there was one instance of attempted rape and one young victim had experienced anal penetration by a finger.

In Table 41.4, a comparison is given of the more serious types of sexual acts committed against children and youths by dangerous offenders and other convicted male offenders. On average, dangerous offenders had proportionately committed somewhat more serious offences than other offenders but there were both exceptions to this trend, and in some instances, the differences were modest.

**Table 41.4**  
**Comparison of Types of Sexual Acts Committed**  
**by Dangerous Child Sexual Offenders**  
**and Other Convicted Male Child Sexual Offenders**

Type of Sexual Act Committed Against the Child	Male Victims		Female Victims	
	Dangerous Offenders (n=20)	Other Offenders (n=109)	Dangerous Offenders (n=39)	Other Offenders (n=506)
	Per Cent	Per Cent	Per Cent	Per Cent
Oral — genital	15.0	22.9	15.4	8.9
Attempted vaginal penetration with penis	—	—	12.8	9.7
Vaginal penetration with penis	—	—	38.5	35.0
Attempted anal penetration with penis	5.0	4.6	—	1.4
Anal penetration with penis	25.0	14.6	5.1	1.4
Bestiality	—	0.9	2.6	0.6

*National Corrections Survey.*

Two in five dangerous offenders (38.5 per cent) had raped female victims, a proportion that was a tenth higher than that of other male convicted offenders (35.0 per cent) who had committed rape. About one in eight dangerous offenders (12.8 per cent) had attempted to commit rape, whereas this type of act had been committed against about one in 10 victims (9.7 per cent) of other male offenders.

None of the dangerous offenders had attempted anal penetration with a penis against female victims. In contrast, this act had been attempted against seven victims of other offenders. Anal penetration with a penis against female



victims had been committed by two dangerous offenders and seven other male offenders. There was one instance of bestiality (2.6 per cent) involving a female victim of a dangerous offender and three such incidents (0.6 per cent) had been committed against the female victims of other offenders.

Anal penetration with a penis had been committed against five male victims (25.0 per cent) of dangerous offenders and 16 male victims (14.6 per cent) of other convicted offenders. Attempted acts of this kind had involved about one in 20 victims of both types of offenders.

In relation to the gravity of the types of sexual acts committed by dangerous sexual offenders, a substantially higher proportion of female victims than that of male victims had serious sexual acts committed against them. Overall, about six in 10 female victims had sustained a serious offence while acts of comparable gravity had been committed against about three in 10 male victims of dangerous offenders. These findings further support the earlier observation that there are two distinctive sub-groupings of dangerous child sexual offenders, contingent upon whether homosexual or heterosexual offences had been committed. The findings suggest that significantly different considerations were involved in the assessments made concerning the nature of the dangerous behaviour of these two types of offenders. It is evident that an explication of these criteria is warranted and that these different types of offenders may require substantially different types of management and treatment while they are in custody or under supervision.

## Use of Threats and Force

On the basis of the criteria used in the other national surveys in relation to the classification of the use of threats and force in sexual offences committed against children, there was virtually no difference in the occurrence of this element of the offences which were committed by dangerous child sexual offenders (40.3 per cent) and those committed by other male convicted sexual offenders (43.2 per cent). There were differences, however, in relation to whether homosexual or heterosexual offences had been committed by the two groups of convicted offenders.

Use of Threats or Force Against Victims	Male Victims		Female Victims	
	Number	Per Cent	Number	Per Cent
Dangerous child sexual offenders	5	25.0	20	51.3
Other convicted male child sexual offenders	39	35.8	227	44.9
TOTAL	44	34.1	247	45.3

The findings indicate that, on average, proportionately fewer dangerous offenders committing homosexual offences had used threats or force than other convicted sexual offenders in this category while the reverse was true in the case of offenders in these two categories who had committed heterosexual offences.

Overall, however, on the basis of findings obtained uniformly for both groups of sexual offenders in relation to the use of threats and force, it is evident that the differences between the two groups along these lines were minimal. While these findings do not concur fully with those of the 1974 Survey of Sexual Offenders in this regard, the results of both surveys indicate that relative to other convicted sexual offenders, dangerous offenders appeared not to have resorted to more violence than was the case in the former group. On this point, the 1974 Survey noted that "offenders designated as D.S.O.'s used less physical force on their victims than other offenders not so labelled and charged and convicted of rape, attempted rape, indecent assault on females and those convicted of incest."<sup>15</sup>

In the case of both surveys, approximately three in five dangerous sexual offenders were reported not to have used threats or physical force against victims.

### Physical Injuries

About one in eight (12.4 per cent) of the victims of the 695 convicted male child sexual offenders was reported to have been physically injured by his or her assailant. The proportion in this category is slightly lower (11.7 per cent) in the case of the 633 offenders who were not found to be dangerous. In contrast, about one in five victims (19.4 per cent) of dangerous child sexual offenders was reported to have been physically injured, and as is the case for all convicted offenders, proportionately more female than male victims had been physically injured.

Physical Injuries Sustained by Victims	Male Victims		Female Victims		Multiple Victims		Total	
	No.	%	No.	%	No.	%	No.	%
Dangerous child sexual offenders	2	10.0	9	23.1	1	33.3	12	19.4
Other convicted male child sexual offenders	8	7.3	62	12.3	4	22.2	74	11.7
TOTAL	10	7.8	71	13.0	5	23.8	86	12.4

On average, about one in 25 victims (3.9 per cent) of all convicted offenders had been hospitalized. About one in 29 of the victims (3.5 per cent) of 633 convicted offenders had been hospitalized, a proportion less than half of that (8.1 per cent) involving victims of dangerous offenders. Only one victim of a homosexual offence had required hospitalization while this had happened to about one in eight victims of heterosexual offences (12.8 per cent).

## Age of Offenders

In comparison with other convicted offenders, both dangerous offenders and their male victims were, on average, older and this was also the case in relation to dangerous offenders who had committed heterosexual offences. The findings involving a comparison of the two groups of offenders having committed heterosexual offences are rendered somewhat ambiguous by the number of cases for which this information was not obtained. The information available suggests that, as in the case of offenders convicted of homosexual offences, dangerous offenders having female victims, tended to be older than other convicted male offenders. These trends are consistent with those concerning the age when the first juvenile offence and/or adult conviction had occurred, suggesting that proportionately more dangerous offenders had been convicted at an earlier age than was the case for other offenders and that the imposition of the legal provisions pertaining to dangerous offenders had generally been applied in cases involving somewhat older offenders. These findings are compa-

**Table 41.5**  
**Age Distribution of Dangerous Child Sexual Offenders**  
**and Other Convicted Male Child Sexual Offenders**

Age of Convicted Offender	Male Victims		Female Victims	
	Dangerous Offenders (n=20)	Other Offenders (n=109)	Dangerous Offenders (n=39)	Other Offenders (n=506)
	%	%	%	%
Under age 21	—	11.9	5.1	17.2
21 – 30 years	20.0	18.4	35.9	26.7
31 – 40 years	30.0	22.0	30.7	20.4
41 – 50 years	20.0	11.0	15.4	9.8
51 – 60 years	—	7.3	2.6	3.7
61 and older	5.0	4.6	2.6	1.6
Not reported	25.0	24.8	7.7	20.6
TOTAL	100.0	100.0	100.0	100.0

*National Corrections Survey.*



rable to those documented in the 1974 Survey of Sexual Offenders in which a comparison was made between the age distribution of 66 dangerous sexual offenders and 429 other convicted sexual offenders.<sup>16</sup>

## Social Background

In almost every aspect of their social background for which sufficient comparable information was available, dangerous child sexual offenders differed from other convicted male child sexual offenders. The composition and stability of the families in which they had grown up in as children indicate that unlike other offenders, proportionately more had had no siblings and a larger number had experienced broken homes.

In about equal proportions, both groups of offenders — dangerous and others — had lived in families having both natural parents present (for dangerous sexual offenders, 87.1 per cent, natural mother; 88.7 per cent, natural father). However, there was a sharp difference between the two groups in relation to their having had brothers and sisters. About a third of the dangerous offenders did not have sisters (30.6 per cent) and a quarter did not have brothers (25.8 per cent).

In relation to the types of offences for which they were later found to be dangerous, two-thirds of offenders committing heterosexual offences had sisters (66.7 per cent) and brothers (71.8 per cent) and six in 10 offenders who later committed homosexual offences had sisters (60.0 per cent) and brothers (60.0 per cent).

As noted in the findings given concerning the families of all convicted child sexual offenders, little information was consistently available concerning the values, attitudes and affection that these offenders may have known as children. However, in sharp contrast with the 633 convicted child sexual offenders (11.0 per cent), almost a third of dangerous child sexual offenders had experienced broken homes, been removed by child protection agencies from their homes, or had otherwise been separated at some point from one or both parents.

When the offences were committed, about an equal proportion in both groups having female victims had been married. There was a sharp contrast, however, between the two groups with respect to the marital status of offenders having male victims. Four in five dangerous offenders (80.0 per cent) in this category had been single, whereas only slightly over half of other offenders had never married.

With one exception, the employment status of dangerous offenders was comparable to that of other offenders. Overall, less than half (46.8 per cent) had held full-time employment and about an equal number (48.4 per cent) had had part-time or seasonal jobs, or had been unemployed. The exception was

dangerous offenders who had committed homosexual offences. Half of this group (50.0 per cent) had held full-time positions.

Dangerous offenders having male victims, on average, had received more schooling than dangerous offenders who had committed heterosexual offences. Of the former group, six in 10 (60.0 per cent) had had high school training or had enrolled in post-secondary courses, in contrast to the latter group of whom about a half (51.3 per cent) had had only a primary grade school education. This difference in the relative schooling of the two groups broadens sharply in relation to the proportion of the two groups that had attended post-secondary vocational training programs, colleges or universities. A quarter of the offenders (25.0 per cent) who had been found dangerous as a result of committing homosexual offences had attended post-secondary educational institutions in contrast to one in 20 dangerous offenders (5.1 per cent) having comparable training who had committed heterosexual offences.

Despite the limitations of these findings, it is evident that the situation of dangerous offenders prior to sentencing differed in certain important respects from that of other convicted child sexual offenders. Proportionately, more of the former than the latter had grown up in families with fewer siblings and more had come from broken homes. Also, substantially fewer dangerous sexual offenders than other offenders who had committed homosexual offences had married; more of them had held full-time employment and were better educated; proportionately, both they and their victims were, on average, older; and as a group, fewer had committed serious sexual acts against victims.

Dangerous sexual offenders who had committed heterosexual offences, except for the composition and stability of their families in which they had grown up as children, were similar in most other ways in terms of the information available to other convicted offenders having female victims.

## Type of Association

Persons designated as dangerous child sexual offenders provide a striking exception to the trend documented in the national surveys concerning the type of association between victims and offenders. A consistent finding in the other research conducted by the Committee was that most victims not only had known who their assailants were, but that many of these persons were family members, relatives or persons responsible for the child's well-being. This general trend was supported in the review of 695 convicted male child sexual offenders. When this group is considered in relation to whether offenders had been found by courts to be dangerous (62) in comparison to those who were not so designated (633), sharply distinctive trends are apparent with respect to the type of association between victims and offenders in the two groups of convicted child sexual offenders.

In the group of 62 dangerous child sexual offenders, four were family members or relatives to victims (6.5 per cent). These persons were: a step-

Table 41.6

**Type of Association Between Victims and Dangerous Child Sexual Offenders  
and Other Convicted Male Child Sexual Offenders**

Type of Association	Male Victims		Female Victims		Multiple Victims	
	Dangerous Offenders (n=20)	Other Offenders (n=109)	Dangerous Offenders (n=39)	Other Offenders (n=506)	Dangerous Offenders (n=3)	Other Offenders (n=18)
	%	%	%	%	%	%
Relationship of incest	—	2.7	—	13.0	—	16.7
Other blood relative	—	3.7	5.1	3.8	33.3	11.1
Guardianship position	—	—	2.6	8.9	—	5.5
Other family member	—	3.7	—	5.5	—	5.5
Position of trust	15.0	3.7	—	2.4	—	—
Friends, acquaintances	35.0	18.3	15.4	19.8	66.7	11.1
Other persons	10.0	12.8	—	7.3	—	11.1
Strangers	40.0	30.3	76.9	22.3	—	16.7
Not reported	—	24.8	—	17.0	—	22.2
TOTAL	100.0	100.0	100.0	100.0	100.0	99.9*

*National Corrections Survey.*

\*rounding error

father, two uncles and a cousin. One offender was a guardian to the child and three who had held a position of trust were teachers.

Overall, three in four dangerous child sexual offenders (61.3 per cent) were strangers, a type of association that varied in relation to whether homosexual or heterosexual offences had been committed. Two in five offenders (40.0 per cent) having male victims were strangers. In contrast, over three in four dangerous offenders (76.9 per cent) having female victims were strangers. Of the three dangerous offenders having multiple victims, one was a relative and two were acquaintances.

In comparison to the 633 other convicted male child sexual offenders, of whom one in nine (11.4 per cent) was in a legal relationship of incest to the child, none of the dangerous offenders had this type of association with a victim. Over one in four of the former group (27.8 per cent) was either a family member, relative or guardian to the child, a proportion over four times larger than that for dangerous offenders (6.5 per cent). About one in four other con-



victed offenders (23.5 per cent) was a stranger whereas over three in five dangerous offenders (61.3 per cent) were reported not to have known their victims prior to having committed sexual offences against them.

This disparity between the two groups of offenders was particularly notable in incidents involving heterosexual offences. Only about one in five other convicted male offenders (22.3 per cent) was a stranger to the female victim. In comparison, over three in four dangerous offenders (76.9 per cent) having female victims were strangers. The difference between the two groups of offenders that had committed homosexual offences was less marked; in a majority of these offences in both categories, victims and offenders had previously been acquainted.

## Assaults by Groups

Two dangerous sexual offenders, both having committed heterosexual offences, had had one or more accomplices. None of the homosexual offenders was known to have had an accomplice. This proportion (3.2 per cent) is considerably less than in the group of other convicted male child sexual offenders (7.4 per cent) in which accomplices were involved.

## Charges Laid

A single charge had been laid against one in 10 dangerous sexual offenders (9.7 per cent). For both dangerous and other convicted child sexual offenders, those who had committed heterosexual offences averaged the fewest charges laid and those having multiple victims had the highest average. There was a sharp proportional increase, however, in the average number of charges laid involving sexual offences against dangerous offenders who had committed homosexual offences in comparison to other convicted offenders having male victims. The specific charges involving sexual offences laid against dangerous child sexual offenders are listed in Table 41.7.

## Previous Criminal Record

With one exception, that of a male who had committed a heterosexual offence, all other dangerous child sexual offenders had a previous criminal record, on average, 11.3 convictions. Only eight of those with a prior record (13.1 per cent) had had a single previous conviction. These convictions were for both sexual and other types of offences. The statistically average experience in this regard (which is misleading) differs sharply from that of the 633 other convicted male child sexual offenders. Approximately a third of the latter

**Table 41.7**  
**Charges Laid for Sexual Offences**  
**against Convicted Dangerous Child Sexual Offenders**

Charges Laid Involving Sexual Offences	Male Victims (n=20)		Female Victims (n=39)		Multiple Victims (n=3)	
	Number	Non- Accum. %	Number	Non- Accum. %	Number	Non- Accum. %
Rape	—	—	15	38.5	—	—
Attempt to commit rape	—	—	3	7.7	—	—
Sexual intercourse, female under 14	—	—	5	12.8	—	—
Indecent assault female	—	—	30	76.9	7	233.3
Buggery	13	65.0	—	—	—	—
Indecent assault male	25	125.0	—	—	2	66.7
Gross indecency	13	65.0	4	10.3	—	—
Indecent act	—	—	3	7.7	—	—
Contributing to/J.D.A.	6	30.0	1	2.6	—	—
Kidnapping	—	—	—	—	1	33.3
Possession of fire- arm	1	5.0	—	—	—	—
Break-and-Enter	—	—	2	5.1	—	—
Escape from cus- tody	—	—	1	2.6	—	—
Wounding causing bodily harm	1	5.0	—	—	—	—
Failure to appear on recognizance, revocation of parole	2	10.0	2	5.1	—	—

*National Corrections Survey.*

group had no previous criminal record and about one in seven had committed an offence as a juvenile. On average, about one in four dangerous offenders (27.4 per cent) was known to have committed a juvenile offence (homosexual offenders, 20.0 per cent; heterosexual offenders 33.3 per cent).

Of the 13 dangerous offenders having a juvenile record who later had committed heterosexual offences, all had been 15 years-old or younger when they had had their first encounter with the law. In contrast to this group, three in five convicted male offenders who had a juvenile record had been age 15 or younger when they had first committed offences as juveniles. None of the three

dangerous offenders having multiple offenders had a juvenile record; the four dangerous offenders having juvenile records who had later committed homosexual offences were somewhat older than their counterpart group of other convicted male offenders.

Previous Criminal Record	Male Victims (n=20)	Female Victims (n=39)	Multiple Victims (n=3)
	Non-Accumulative Percentage		
<i>None</i>	—	2.6	—
<i>One or more convictions:</i>	100.0	97.4	100.0
(i) Juvenile	20.0	33.3	—
(ii) Adult	100.0	97.4	100.0
AVERAGE NUMBER OF PREVIOUS CONVICTIONS	15.5	8.3	20.7

The trend concerning the age when dangerous offenders had initially been convicted is clear and consistent with respect to when their first convictions as adults had occurred. Of offenders found dangerous for having committed heterosexual offences, three in five (60.5 per cent) had been first convicted when they were 20 years-old or younger. In contrast, of other convicted male offenders having previous convictions, about one in 12 (8.4 per cent) had been a similar age when this had happened. The findings reflecting this trend are comparable for offenders who had subsequently committed offences having multiple victims and those who later had committed homosexual offences.

While a significant proportion of both groups of convicted offenders — dangerous and others — had been previously convicted, it would appear at face value that dangerous child sexual offenders were set apart by the sheer volume of the crimes they had previously committed. For instance, the three dangerous offenders having multiple victims had, on average, 20.7 previous convictions. Similarly, dangerous offenders having committed homosexual offences had also had a considerable number of previous convictions averaging 15.5 per offender, and while the rate for those having committed heterosexual offences (8.3 previous convictions per offender) was considerably lower than for the two other groups of dangerous offenders, the volume of the crimes that they had committed was still substantial.

These findings concerning the apparently high level of recidivism among dangerous child sexual offenders are misleading if only the average rates are considered. These average rates are sharply inflated by the inordinately large number of offences committed by about one in five dangerous offenders (21.0 per cent). In a group as small as that constituting dangerous child sexual offenders (a total of 62), the high level of persistent recidivism of a small subgroup of 13 dangerous offenders serves to distort sharply the average rate of



recidivism for the majority of the other offenders. Between them, the sub-group of 13 recidivists had a total of 338 previous convictions, averaging 26 per offender. Eight of this group had been found dangerous as a result of homosexual offences, four for heterosexual offences and one who had had multiple victims. When the experience of these 13 offenders is set apart from that of the other 49 dangerous child sexual offenders, and the recidivism of the latter is compared to that of the 633 'non-dangerous' convicted offenders, then the findings provide the following distribution with respect to previous convictions. (One dangerous offender had no previous criminal record).

Type of Victim	Dangerous Offenders		Other Male Offenders	
	Number	Average of Previous Convictions	Number	Average of Previous Convictions
Male victims	12	4.7	60	4.8
Female victims	34	4.9	300	5.1
Multiple victims	2	5.5	11	10.1
<b>TOTAL</b>	<b>48</b>	<b>4.9</b>	<b>371</b>	<b>5.2</b>

Excluding 14 dangerous offenders: one, no previous conviction; eight, homosexual offences; four, heterosexual offences; and one, multiple victims.

**The findings on the recidivism of dangerous child sexual offenders indicate that, with the exception of a small group of highly persistent recidivists, the experience of the majority (48 offenders having previous convictions) was indistinguishable from that of the record of recidivism of other convicted male child sexual offenders who were not designated as dangerous offenders.**

In contrast with other convicted child sexual offenders, of whom over half had previously been in custody (56.4 per cent), only three dangerous offenders (4.8 per cent) had not previously served time in prison. Of those who had previously been in custody, about an equal proportion in each group had at least on one occasion been placed in protective custody but in contrast with other convicted male offenders, fewer dangerous offenders had taken part in prison incidents (6.6 per cent).

## Summary

1. Of 114 'dangerous' offenders serving indefinite sentences, 84 were dangerous sexual offenders; of this latter group, 62 had been found dangerous (73.8 per cent) on sentencing for sexual offences committed against children and youths.
2. About a third of the victims of the 62 dangerous offenders were males, less than two-thirds were females, and the remainder had had multiple victims. In comparison to the victims of other convicted child sexual

offenders, the female victims of dangerous offenders were, on average, younger while the male victims of these offenders were somewhat older.

3. Of the 62 dangerous offenders, about one in 20 (4.8 per cent) had lived in the same household as the victim.
4. While dangerous child sexual offenders had committed proportionately somewhat more serious sexual offences against victims than had other convicted child sexual offenders, the differences were more a matter of degree than of kind. Proportionately more serious acts were committed against female victims than male victims.
5. On average, dangerous sexual offenders had not threatened or physically coerced victims more than had other convicted child sexual offenders.
6. Whereas about one in eight (11.7 per cent) other convicted offenders had physically injured a victim, this proportion was about one in five (19.4 per cent) in the case of victims of dangerous child sexual offenders.
7. Dangerous child sexual offenders were somewhat older on average than other convicted male child sexual offenders and a substantially larger proportion of the former group was younger when they had first been convicted.
8. In comparison with other convicted male child sexual offenders, proportionately more dangerous offenders had grown up in broken homes, fewer having male victims had ever been married, and in general, their employment status was comparable.
9. One in 15 dangerous offenders was a family member or relative of the victim; three in five were strangers. In contrast, of other convicted male offenders, over one in four was a family member or relative and about an equal proportion was strangers.
10. Two dangerous offenders had had accomplices in comparison to 7.4 per cent of other convicted child sexual offenders.
11. The average number of charges laid against dangerous offenders, with the exception of those having male victims, was comparable to that of other offenders.
12. In sharp contrast to other convicted child sexual offenders of whom about a third had no previous criminal record, 61 of 62 dangerous child sexual offenders had previous convictions. About one in four of the latter group had a juvenile record.
13. Thirteen dangerous child sexual offenders had, on average, 26 previous convictions. One had no previous record. The recidivism rate of 48 dangerous child sexual offenders was identical to that of other convicted male child sexual offenders who had previously been convicted.

**When the circumstances of the sexual offences committed by dangerous child sexual offenders are compared to those committed by other convicted male child sexual offenders, it is evident that the main dimensions of the elements of the offences committed by both groups were remarkably similar. The two groups did not differ with respect to the use of threats or physical force**

against victims. While there was a trend towards more serious acts having been perpetrated, these differences were relatively small. A sizeable proportion of convicted offenders who were not designated dangerous had committed similar sexual acts against victims. While double the proportion of the victims of dangerous sexual offenders as that of other offenders had been physically injured, four in five victims in the former group were not reported to have been physically harmed. With the exception of one in five dangerous offenders who had long criminal records, the rate of recidivism for four in five dangerous offenders was similar to the record of other convicted child sexual offenders having previous convictions.

The findings of the National Corrections Survey in which information was obtained for all dangerous child sexual offenders (effective February, 1982) suggest that the type of association between convicted offenders and victims may have been a significant factor on sentencing in influencing whether offenders were likely found to be dangerous. Although one in 11 convicted male offenders in the National Corrections Survey was a natural father to the victim, none had been classified a dangerous offender. As a group, fathers — natural, step, foster, adoptive and common-law — constituted 130 of 695 convicted male child sexual offenders (18.7 per cent). Only one, a step-father, had been classified a dangerous offender.

**The findings signify that although a father may have intimidated, threatened and coerced his child over a period of time, and may have repeatedly committed acts such as vaginal or anal penetration with a penis, there was virtually no likelihood on sentencing that he would be found dangerous. In contrast, the findings indicate that the commission of similar or less serious sexual offences by strangers was more likely to result in the imposition of the legal provisions pertaining to dangerous offenders.**

The statutory provisions authorizing the preventive detention of persons found to be dangerous were noted in Chapter 37, *Sentencing*. Among other considerations, these provisions provide that the Crown must prove beyond reasonable doubt that the behaviour of a convicted offender was repetitive, persistently aggressive, and acts resulting in serious personal injury had been committed. In light of the findings of the National Corrections Survey, **there can be no doubt that the application of these legal provisions pertaining to dangerous offenders, in instances where sexual offences against children and youths had been committed, is not made on a consistent and uniform basis.**

On the basis of its review, the 1969 *Ouimet Report* concluded “that legislation which is susceptible of such uneven application has no place in a rational system of corrections.”<sup>17</sup> Despite subsequent amendments to this legislation, during the intervening decade and a half little has changed to alter the operation in practice of these provisions. Sharp regional disparities still persist. The Committee’s findings clearly show that many offenders convicted of having committed serious acts are not designated as dangerous offenders; and of those so classified, many appear to have committed offences which are no graver than those perpetrated by other convicted child sexual offenders.



In the Committee's judgment, the options with respect to the continued application of these provisions are clear in relation to persons convicted of being sexual offenders against children and youths. Either these provisions, which are now inequitably applied, should be amended, or new separate legislation should be introduced to provide added protection for children against sexual offences.

**Accordingly, the Committee recommends that:**

- 1. The provisions in Part XXI of the *Criminal Code* relating to dangerous offenders convicted of sexual offences against children and youths be amended to:**
  - (i) specify the major sexual offences in the definition of "serious personal injury offence";**
  - (ii) specify the conduct by which a sexual offender shows his disregard for others, and in particular, for children; and**
  - (iii) indicate clearly that physical or mental harm is not a requirement in the case of child victims of sexual offences.**
- 2. In keeping with the above amendments, which focus on specific conduct and offences, any mention of the prediction of future behaviour be deleted from dangerous offender legislation.**
- 3. If the above amendments are not enacted, new legislation, separate from the dangerous offender provisions and meeting the proposed requirements, should be enacted to provide added protection for children against sexual offences.**

## References

### Chapter 41: Dangerous Sexual Offenders

- <sup>1</sup> Canada. *Report of the Royal Commission on the Criminal Law Relating to Sexual Psychopaths*, Ottawa: Queen's Printer, 1958.
- <sup>2</sup> Canada. Department of the Solicitor General. *Report of the Canadian Committee on Corrections*, Ottawa: Queen's Printer, 1969.
- <sup>3</sup> See review in Chapter 37, *Sentencing*.
- <sup>4</sup> Marcus, A.M. and C. Conway, Dangerous Sexual Offender Project, *Canadian Journal of Corrections*, 11: 199, 1969.
- <sup>5</sup> Greenland, C., Dangerous Sexual Offenders in Canada, *Canadian Journal of Criminology and Corrections*, 14: 50-51, 52-53, 1972.
- <sup>6</sup> *R. v. Milne* (Vancouver, C.A. 800591, March 10, 1982).
- <sup>7</sup> *R. v. Langevin* (Ont. Co. Ct., October 14, 1980).
- <sup>8</sup> *R. v. Robertson* (1982), 39 A.R. 273 (C.A.).
- <sup>9</sup> *Hall v. The Queen* (1981), 63 C.C.C. (2nd) 535, 16 Alta. L.R. 289, 32 A.R. 320 (C.A.).
- <sup>10</sup> Report of the Canadian Committee on Corrections, *op. cit.*
- <sup>11</sup> *Ibid.*, p. 252.
- <sup>12</sup> *Ibid.*, p. 256.
- <sup>13</sup> *Ibid.*, p. 257.
- <sup>14</sup> Searle, C.A., *A Study of Sexual Offenders in Canada and a Proposal for Treatment*, Ottawa: Canadian Penitentiary Service, 1974 (mimeo).
- <sup>15</sup> *Ibid.*, p. 5.
- <sup>16</sup> *Ibid.*, Annex A., p. 2.
- <sup>17</sup> Report of the Canadian Committee on Corrections, *op. cit.*, p. 253.

Part VIII

Juvenile Prostitution





## Chapter 42

# The Law Relating to Juvenile Prostitution

The issue of prostitution in Canada, in particular, juvenile prostitution, is clothed with ambiguity, myths and hypocrisy. Publicly, there is widespread indignation and condemnation concerning the plight of these youths. Their visible presence on the downtown street corners of many large Canadian cities is seen in some quarters as a failure of existing public services — social, enforcement and legal — to deal adequately with the problem. A sharp disparity exists between what is publicly said should be done and what is actually done to reduce the occurrence of juvenile prostitution. While in the rhetoric of public debate the needs of these youths are allegedly recognized, the services available to them either are limited in scope, or in some instances, have been curtailed.

Speaking off the record, many experienced professionals working with young prostitutes have adopted a defeatist attitude that little can constructively be done to help these youths. From the perspective of these workers, Canadian society is socially and ethically divided with respect to mounting substantial and relevant programs which might ameliorate the situation. Some of the “quick-fix” proposals made to control the problem, they conclude, constitute little more than an expedient wall-papering of a deeply-rooted and complex problem. If introduced, these proposals would only serve to reduce the visibility of a public nuisance, but would not alter the basic dimensions of the problem.

Most of the mainline public services either deal minimally with these youths, or because of difficulties involved in working with persons engaged in immoral and, on occasion, criminal activities, the credibility of these programs may be challenged. There are few success stories involving the rehabilitation of juvenile prostitutes. Much anger is also voiced publicly concerning the allocation of scarce public resources to assist deviant youths who are difficult to reach, who even if helped may revert to prostitution, or who may be seen to be exploiting public services for their own ends.

Prostitution is big business in Canada. Its full dimensions are unknown. It is evident, however, that a sizeable number of Canadians are customers of adult and juvenile prostitutes. For many young hustlers, prostitution is the entry point for starting a criminal career. Until recently, the brunt of public condemnation focussed largely upon prostitutes themselves. The other side of

the problem, that involving tricks or customers, was ignored or shielded from public attention. A measure of the sense of public ambiguity surrounding this issue is indicated by the absence of accurate official statistics for Canada about the numbers of persons charged with soliciting, and by the fact that there is no official documentation at the national level about the customers and prostitutes.

In undertaking its research, the Committee found that little was known about: the backgrounds and careers of these youths; the types of public and community services available to help them; the efficacy of existing enforcement practices and legal sanctions; and whether and under what conditions these youths may be willing to seek and accept assistance. Because the unsavoury aspects of juvenile prostitution challenge the roots of Canadian society's moral values, in response to widespread public concern, various instant remedies have been proposed in order to contain or eliminate this problem. Contrasting perspectives alternately portray juvenile prostitutes as exploited deviant victims who need special treatment and services, or they are depicted as potential or actual criminals who should be disciplined and punished. Depending upon which perspective is adopted, or whether elements of both viewpoints are drawn upon, the solutions proposed call for either a sharp extension of outreach services, or the amendment of legislation with respect to: broadening the definition of soliciting; the laying of charges against the customers of prostitutes; and the introduction of stiffer penalties for pimps living on the avails of prostitution. In considering these options, in the Committee's judgment there is insufficient information available to assess their validity and potential efficacy in relation to dealing effectively with the problem.

Little is known about youths who become prostitutes. It has been variously suggested that: these youths have come from poor or disadvantaged backgrounds; they were physically and sexually abused as children; their parents or guardians were irresponsible and cast them out on the streets; and they were exploited having no other alternatives to which to turn. In some quarters, it is also believed that persons of particular social, economic or ethnic backgrounds are more likely to become prostitutes than those having grown up in different circumstances. Little is also known about how these youths actually become prostitutes, the numbers working on a part-time or full-time basis, or whether they work alone, in groups or under the control of pimps.

The Committee's Terms of Reference ask it to determine the incidence and prevalence in Canada of prostitution involving young persons, and to examine the relationship between the enforcement of the law and the other mechanisms used by the community to protect young persons from this form of sexual exploitation. In reviewing its mandate, the Committee identified a number of social and legal issues requiring documentation. In this regard, it drew upon the counsel of a number of persons from across the country having considerable experience in working with juvenile prostitutes and reviewed the few available reports dealing with the issue. It was on this basis that a survey was mounted in several large Canadian cities in seven provinces which obtained



information directly from 229 juvenile prostitutes. The findings of this survey are given in Chapters 43-46. In this chapter, the prostitution-related offences in the *Criminal Code* are reviewed. Before considering these provisions, some preliminary points should be noted:

1. *The practice of prostitution per se is not an offence under Canadian law.* A prostitute commits no offence by earning his or her living from sexual commerce. Rather, the offences in Part V of the *Criminal Code* are intended either to abate the nuisance caused by flagrant solicitations in public places, or to suppress derivative practices which are unacceptable socially, for example, pimping, living on a prostitute's avails, or keeping a common bawdy-house.
2. *A municipality cannot constitutionally prohibit, nor can a province validly empower it to prohibit, persons from soliciting on public streets for the purpose of prostitution.* This is a matter within Parliament's exclusive constitutional power to pass laws in relation to the criminal law.<sup>1</sup> Accordingly, municipal by-laws that directly purport to prohibit this activity are, to that extent, of no force or effect.<sup>2</sup>

Although the Canadian criminal law relating to prostitution has many aspects, it can conveniently be grouped into four categories:

1. Soliciting for the purpose of prostitution;
2. Procuring a person to become a prostitute or to have illicit sexual intercourse with another person;
3. Living on the avails of prostitution of another person; and
4. Keeping a common bawdy-house.

## Soliciting for the Purpose of Prostitution

Section 195.1 of the *Criminal Code* provides that "every person who solicits any person in a public place for the purpose of prostitution is guilty of an offence punishable on summary conviction."<sup>3</sup> This section was enacted in 1972,<sup>4</sup> and replaced an earlier provision which stated that "every one commits vagrancy who, being a common prostitute or night walker is found in a public place and does not, when required, give a good account of herself."<sup>5</sup> While the repealed section was in the nature of a pre-emptive strike at female prostitutes who merely attended at public places for the apparent purpose of plying their trade, the provision enacted in 1972 (namely, section 195.1) was, in different respects, both wider and narrower in scope. On the one hand, it applied to "every one", and thus comprised both female and male prostitutes. On the other hand, however, it proscribed only the specific act of soliciting a person in a public place for the purpose of prostitution. In this legislative amendment can be seen the law's evident policy of attacking the nuisances or derivative social evils engendered by prostitution, rather than proscribing prostitution itself.

Section 195.1 proscribes soliciting any person in a public place for the purpose of prostitution; the most contentious part of this formula has proven to be

the phrase “solicits . . . for the purpose of prostitution”. Even so, the legal meaning of the word “prostitution” is clear. It is not limited to acts of sexual intercourse engaged in for monetary gain.<sup>6</sup> Rather, the word “prostitution” connotes either the offering of a person’s body for the purpose of sexual intercourse or other sexual gratification, in return for payment, or the performance of physical acts for the sexual gratification of others, in return for payment.<sup>7</sup> Further, the word “prostitution” as used in Section 195.1 does not necessarily imply a course of conduct. A single sexual act will suffice, if the act is of the required character.<sup>8</sup>

In order for an accused prostitute to be convicted of “soliciting” under section 195.1 the accused must both demonstrate an intention to make herself or himself available for prostitution, and exhibit pressing or persistent conduct towards the person sought to be solicited.<sup>9</sup> Where a prostitute merely intimates his or her sexual availability by means of body gestures or other non-intrusive means, such conduct falls outside the prohibition.<sup>10</sup> Further, where a prostitute approaches several persons in succession, but is neither pressing nor persistent in approaching any of them, the cumulative effect of such encounters does not amount to “pressure or persistence.”<sup>11</sup> In order for a section 195.1 charge to succeed, at least one encounter between a prostitute and the person sought to be solicited must involve pressure or persistence on the prostitute’s part.<sup>12</sup> Where the solicitation is of the required character, however, the section 195.1 offence is committed. Whether an act of prostitution actually results from the solicitation is irrelevant to the charge.<sup>13</sup>

Section 195.1 applies to acts of soliciting by both female and male prostitutes.<sup>14</sup> Accordingly, it matters not whether the prostitute in question adopts the clothing and mannerisms of a person of the opposite sex.<sup>15</sup>

Canadian courts have differed on the question of whether a person who is not himself a prostitute, but who actively attempts to engage a prostitute’s services, may be convicted of the section 195.1 offence. The British Columbia Court of Appeal has held that the phrase “for the purpose of prostitution” implies a purpose that is personal to the one who solicits and that, accordingly, a customer does not “solicit for the purpose of prostitution”.<sup>16</sup> Conversely, the Court of Appeal for Ontario has held that a person who actively seeks out a prostitute’s services can be convicted of this offence, provided the solicitation is of the required pressing or persistent character.<sup>17</sup> On this aspect of section 195.1, Canadian law is in a somewhat unsettled state.

The soliciting offence in section 195.1 is only committed where the solicitation is made in a “public place”, which is defined as including any place to which the public has access as of right or by invitation, express or implied.<sup>18</sup> Although this broad definition usually presents little difficulty, some refinements of judicial interpretation have been introduced in the context of solicitations made within or from a motor vehicle. The Supreme Court of Canada has held that, where the solicitation is made while both parties are inside an automobile (notwithstanding that the automobile is parked on a public street),

the automobile is not a “public place” and the section 195.1 offence is therefore not made out.<sup>19</sup> Where, however, the solicitation is made from a person inside an automobile to a person who is in a “public place” (for example, on a sidewalk), the “public place” aspect of the offence is satisfied.<sup>20</sup>

That the section 195.1 offence, due partly to its vague wording and partly to its judicial interpretation, fails to provide an effective legal means for controlling street prostitution has been recognized. Several Canadian municipalities have passed by-laws intended to supply this deficiency, but these have been held unconstitutional as invading Parliament’s exclusive power to legislate in the area of criminal law.<sup>21</sup> Police forces, largely without success, have resorted to laying other sorts of charges, for example, counselling to commit an act of gross indecency, obstructing traffic, and loitering.<sup>22</sup> Nor has the seeming inadequacy of the section 195.1 offence escaped the attention of the judiciary, who are bound to interpret the law as it is written. In the leading case of *R. v. Whitter*,<sup>23</sup> *Mr. Justice McIntyre for the Supreme Court of Canada stated:*<sup>24</sup>

It may well be that the parliamentary intention in this regard in enacting s. 195.1 of the *Code* was that described by the learned dissenting Judge [namely, to abate the social nuisance and inconvenience caused by the practice of soliciting for prostitution in public]. For the reasons which I have endeavoured to express above, however, it is my opinion that the enactment does not give effect to that intention, and renders compliance with the terms of the enactment and achievement of any such parliamentary intention impossible. If change is desirable in this respect, it is my view that legislative action would be necessary.

## Procuring

Section 195 of the *Criminal Code* provides that:

1. Every one who
  - (a) procures, attempts to procure or solicits a person to have illicit sexual intercourse with another person, whether in or out of Canada,
  - (b) inveigles or entices a person who is not a prostitute or a person of known immoral character to a common bawdy-house or house of assignation for the purpose of illicit sexual intercourse or prostitution,
  - (c) knowingly conceals a person in a common bawdy-house or house of assignation,
  - (d) procures or attempts to procure a person to become, whether in or out of Canada, a prostitute,
  - (e) procures or attempts to procure a person to leave the usual place of abode of that person in Canada, if that place is not a common bawdy-house, with intent that the person may become an inmate or frequenter of a common bawdy-house, whether in or out of Canada,



- (f) on the arrival of a person in Canada, directs or causes that person to be directed or takes or causes that person to be taken, to a common bawdy-house or house of assignation,
  - (g) procures a person to enter or leave Canada, for the purpose of prostitution,
  - (h) for the purposes of gain, exercises control, direction or influence over the movements of a person in such manner as to show that he is aiding, abetting or compelling that person to engage in or carry on prostitution with any person or generally,
  - (i) applies or administers to a person or causes that person to take any drug, intoxicating liquor, matter or thing with intent to stupefy or overpower that person in order thereby to enable any person to have illicit sexual intercourse with that person is guilty of an indictable offence and is liable to imprisonment for ten years.
3. No person shall be convicted of an offence under subsection (1), other than an offence under paragraph (j) of that subsection, upon the evidence of only one witness unless the evidence of that witness is corroborated in a material particular by evidence that implicates the accused.
  4. No proceedings for an offence under this section shall be commenced more than one year after the time when the offence is alleged to have been committed.

The various procuring offences outlined in section 195(1) make illegal the practice known colloquially as “pimping”. The law relating to procuring is relatively straightforward and the major legal principles can be stated briefly:

- In order to secure a conviction for “procuring”, the Crown must show that some active part was played by the accused whereby he or she was able to cause, induce, or persuade the person procured to engage in illicit sexual intercourse or prostitution.<sup>25</sup>
- “Prostitute” in the context of section 195 means a person of *either* sex who engages in prostitution.<sup>26</sup>
- The phrase “illicit sexual intercourse” in section 195(1) does not necessarily mean contrary to law, but has broader connotation. Accordingly, it includes sexual intercourse that is contrary to moral standards or that offends religious prescriptions.<sup>27</sup>
- It is irrelevant to this offence whether the person who is procured consents to engaging in prostitution or illicit sexual intercourse.<sup>28</sup>
- On a charge under section 195(1)(a), the Crown is not required to show that an act of sexual intercourse involving the person procured actually took place. The offence is directed at the conduct of the procurer in facilitating the illicit sexual intercourse, regardless of whether a sexual act is consummated.<sup>29</sup> Accordingly, where no sexual intercourse is proven, an accused may nevertheless be convicted of an attempt to procure pursuant to section 195(1)(a).<sup>30</sup>
- However, on a charge of procuring or attempting to procure a person to become a prostitute, contrary to section 195(1)(d), it is no offence if the person procured is already a prostitute, or if the accused believes that the

person is a prostitute. Parliament intended in this section to attack the social evil of recruiting a person, not already a prostitute, to enter into that life.<sup>31</sup>

- No person may be convicted under sections 195(1)(a) to 195(1)(i) upon the evidence of only one witness, unless the evidence of that witness is corroborated in a material particular by evidence implicating the accused.<sup>32</sup> Further, no proceedings under section 195 may be commenced more than one year after the time when the offence is alleged to have been committed.<sup>33</sup>

## Living on the Avails of Prostitution

Section 195 of the *Criminal Code* provides that:

1. Every one who
  - (j) lives wholly or in part on the avails of prostitution of another person, is guilty of an indictable offence and is liable to imprisonment for ten years.
2. Evidence that a person lives with or is habitually in the company of prostitutes, or lives in a common bawdy-house or house of assignation is, in the absence of evidence to the contrary, proof that the person lives on the avails of prostitution.
4. No proceedings for an offence under this section shall be commenced more than one year after the time when the offence is alleged to have been committed.

In a prosecution for living on the avails of prostitution, it is not sufficient for the Crown merely to establish payment by the prostitute to the accused. Parliament, by using the phrase “*lives on the avails of prostitution*” intended that the simple receipt of money from a prostitute be outside the prohibition.<sup>34</sup> The offence under section 195(1)(j) requires proof that the accused at least either received directly or in kind all or part of the prostitute’s proceeds from prostitution, or that the accused in some way had those proceeds applied to support his living.<sup>35</sup> The words “living on” connote living parasitically. Accordingly, persons who merely offer prostitutes’ services which are offered to the public generally, for example, doctors, lawyers, or retailers, do not thereby live on the avails of prostitution.<sup>36</sup>

Where, however, the accused performs a service which is, of its nature, referable to prostitution and to nothing else, the offence is clearly made out. An accused who advertises a prostitute’s readiness to prostitute herself, in return for payment from same, manifestly lives on the avails of prostitution.<sup>37</sup> Moreover, the court in whose judicial district the acts of prostitution take place has jurisdiction to try this offence, notwithstanding that the “avails” thereof (namely, the monetary proceeds) are sent by telegraph money order to the accused in another province.<sup>38</sup>

In *Nobulsi v. The Queen*,<sup>39</sup> the accused was a waiter in a club frequented by prostitutes. He was instrumental in introducing club patrons to the prostitutes therein, and exacted payment from the prostitutes for each patron so introduced. The accused was convicted of living on the avails of prostitution, and his appeal against conviction was dismissed. The Court held that the accused's garnering of customers for the prostitutes, his communication of their availability to prospective customers, and his receipt of payment from the prostitutes for services rendered, provided ample evidence of his guilt.

A prostitute on whose avails another person lives may not be convicted of the offence of conspiring to commit the section 195.1 offence,<sup>40</sup> nor should the prostitute be considered an accomplice of the person who lives on his or her avails.<sup>41</sup> Further, the presumption in section 195(2) applies only where it is established that the accused lives with, or is habitually in the company of, prostitutes. It has no application where the accused is shown to have closely associated with one prostitute only.<sup>42</sup>

The following two legal decisions are particularly relevant to the Committee's mandate, given the youthful ages of the prostitutes involved. Both decisions deal with the legal principles applicable to the offence of living on the avails of prostitution.

*Fisette v. The Queen*<sup>43</sup>

The accused, a 48 year-old male who was a housepainter by profession, was convicted at trial of living on the avails of prostitution and sentenced to imprisonment for two years.

The evidence disclosed that the accused drove from his home in Hull, Quebec, to Toronto, for a holiday. He took about \$550 with him, of which his wife contributed \$250. After he arrived in Toronto, he was introduced to a 14 year-old girl by a mutual male friend. The three of them drove to Windsor, Ontario, where they spent the night. From there they went to Hamilton, then back to Toronto, then to Sudbury, and finally to Val d'Or, Quebec. The accused paid all of the expenses of the trip for both himself and the girl. Throughout the trip, the accused and the girl occupied the same room and slept together.

During the five days that the accused and the girl spent in Val d'Or, the accused required the girl to hand over to him some \$60, which she had earned by prostituting herself with several different men. There was no evidence that the accused procured the girl's customers. The accused was arrested on the basis of the girl's complaint to the police, which was made five days after she and the accused had arrived in Val d'Or.

The accused successfully appealed his conviction for the offence of living on the avails of prostitution. The Court noted the accused's reprehensible behaviour,<sup>44</sup> but held that the elements of this offence had not been made out. The offence requires more than mere payment by a prostitute to the accused, and an accused who accepts such payment in these limited circumstances does not live on the avails of prostitution. Further, the presumption in section 195(2) applies only where it is established that the accused lives with, or is habitually in the company of, prostitutes. It has no application where the accused is shown to have closely associated with one prostitute only. Accordingly, the accused's appeal was allowed and his conviction quashed.



The accused was convicted on charges of living on the avails of prostitution, being in a dwelling-house with intent to commit an indictable offence, attempting to procure a female to have illicit sexual intercourse, and forceable confinement. He received a sentence totalling nine years' imprisonment, and appealed therefrom. The Nova Scotia Court of Appeal considered the sentence imposed to be fit in the circumstances and dismissed the accused's appeal. The facts on which the accused's convictions and sentence were based are cited below.

The offence of being in a dwelling-house with intent to commit an indictable offence occurred when one of the young female complainants was alone in her parent's home. The accused and his brother entered the residence, uninvited, through an unlocked door. They had previously seen the female complainant at a service station where she was employed. After illegally gaining entrance, they invited her out for a drink. She reluctantly agreed, and asked them to wait outside in the car, which they did. She then telephoned her father, who came home and spoke to the two men. They left without further incident.

The accused was convicted of two counts of living on the avails of prostitution. The first count involved a girl, B., who was only 14 when she first met the accused, who was then 28. A personal relationship developed between the two, which included sexual relations. In 1979, B. travelled to California, where she met the accused and worked for him as a prostitute. Later that year, she was returned to Nova Scotia by the California authorities. In January, 1980, she resumed her relationship with the accused in Nova Scotia, and reverted to working for him as a prostitute in that province. Later that year, the accused assaulted B., which prompted her to leave the area and return to California.

The second count of living on the avails of prostitution, and the separate charge of procuring, arose out of a relationship between the accused and two sisters, L. and M., aged 16 and 18. These girls came from a broken home and there was evidence that L. had worked previously as a prostitute. In January, 1980, the accused met the sisters in a tavern in Halifax. As a result of their conversation, L. and M. agreed to prostitute for the accused. He drove them to a nearby residence and arranged for them to reside with his girlfriend. He provided L. with clothing and false identification, and she started to work for him as a prostitute, turning over all of her earnings to him. The other sister, M., was reluctant to prostitute herself, although she had sexual relations with the accused on several occasions. She persisted in her refusal to engage in prostitution, and as a result both she and her sister L. were assaulted by the accused. The sisters eventually left the accused's residence and returned to their mother's home.

The charge of forceable confinement arose out of an incident involving a fifth young woman, D., which occurred in late 1978. She was in a lounge in Halifax with a previous male acquaintance, P. An altercation took place between the accused and P., during which D. was placed in the accused's vehicle by a third male. She was subsequently driven to the accused's residence and forced to take cocaine. During the succeeding days, the accused physically assaulted D., and forced her to engage in sexual intercourse and acts of gross indecency. He also made it clear to her that she was henceforth to work for him as a prostitute. At the first available opportunity, D., fled to Montreal.

The Nova Scotia Court of Appeal held that a sentence totalling nine years' imprisonment was appropriate, having regard to the serious nature of the offences and to the ages of the young women involved. The Court stated:<sup>46</sup>

The appellant's activities and background unfortunately show little respect for the law and the rights of other persons. The learned Chief Justice was satisfied that the appellant was the mastermind in the operation and there was ample evidence to support that conclusion. Viewed as a whole, there was evidence here of a system which involved the procurement of very young girls and the use of force and intimidation in the retention of their services. The girls involved were between the ages of fourteen and eighteen. The primary consideration on sentencing had to be not only deterrence but also the protection of teenagers from what the learned trial judge quite properly regarded as an initiation into a life of prostitution.

## Keeping a Common Bawdy-House

Section 193 of the *Criminal Code* provides that:

1. Every one who keeps a common bawdy-house is guilty of an indictable offence and is liable to imprisonment for two years.
2. Every one who
  - (a) is an inmate of a common bawdy-house
  - (b) is found, without lawful excuse, in a common bawdy-house, or
  - (c) as owner, landlord, lessor, tenant, occupier, agent or otherwise having charge or control of any place, knowingly permits the place or any part thereof to be let or used for the purposes of a common bawdy-house, is guilty of an offence punishable on summary conviction.
3. Where a person is convicted of an offence under subsection (1), the court shall cause a notice of the conviction to be served upon the owner, landlord or lessor of the place in respect of which the person is convicted or his agent, and the notice shall contain a statement to the effect that it is being served pursuant to this section.
4. Where a person upon whom a notice is served under subsection (3) fails forthwith to exercise any right he may have to determine the tenancy or right of occupation of the person so convicted, and thereafter any person is convicted of an offence under subsection (1) in respect of the same premises, the person upon whom the notice was served shall be deemed to have committed an offence under subsection (1) unless he proves that he has taken all reasonable steps to prevent the recurrence of the offence.

It is also an offence, punishable on summary conviction, for any one who "knowingly takes, transports, directs, or offers to take, transport, or direct any other person to a common bawdy-house".<sup>47</sup>

Section 195 creates a number of offences, the most important of which is the offence outlined in section 195(1), namely, "keeping a common bawdy-

house". The legal significance of the terms "common bawdy-house" and "keeping a common bawdy-house" is elaborated below:

## Common Bawdy-House

The *Criminal Code* contains the following definitions:<sup>48</sup>

"Common bawdy-house" means a place that is

- (a) kept or occupied, or
- (b) resorted to by one or more persons for the purpose of prostitution or the practice of acts of indecency;

"Place" includes any place, whether or not

- (a) it is covered or enclosed
- (b) it is used permanently or temporarily, or
- (c) any person has an exclusive right of user with respect to it.

In *Patterson v. The Queen*,<sup>49</sup> the Supreme Court of Canada held that the phrases "kept or occupied" and "resorted to" in the definition of "common bawdy-house" connote a frequent or habitual use of the premises for the purposes of prostitution or the practice of acts of indecency. The Court held that a place may be considered a common bawdy-house where any one or more of the following scenarios is established:<sup>50</sup>

1. Where there is actual evidence of the continued and habitual use of the premises for the impugned purposes;<sup>51</sup>
2. Where there is evidence of the reputation in the neighbourhood that the premises constitute a common bawdy-house;<sup>52</sup> or
3. Where there is evidence of such circumstances as to make the inference that the premises were resorted to habitually for the impugned purposes, a proper inference for the Court to draw.<sup>53</sup>

Any defined space is capable of being a common bawdy-house, if there is localization of a sufficient number of acts of prostitution or indecency within its specified boundaries.<sup>54</sup> Where a building has several rooms, for example, not every room must be used for the impugned purposes in order for the building to qualify as a common bawdy-house, nor must a particular room be used exclusively for such purposes.<sup>55</sup>

In determining whether certain acts are "indecent" within the definition of common bawdy-house cited above, the courts employ, as a test, the Canadian contemporary standard of tolerance.<sup>56</sup> If, employing this standard, the act or acts are patently offensive and would not be tolerated, then the element of indecency has been met. Acts of heterosexual group sex, be they normal or deviate, and which take place within the confines of a private dwelling-house, are not "acts of indecency". Accordingly, a house in which such acts are



engaged in is not, without more, a common bawdy-house. The average reasonable person in Canada would, having regard to prevailing community standards, be prepared to tolerate such activity, at least where no attempt is made to proselytize and where the owner is conscientious about the ages and sensibilities of the revellers whom he invites.<sup>57</sup>

On the other hand, the physical act of masturbation, performed for a fee on complete strangers, constitutes an act of indecency, and premises in which such activity takes place (although ostensibly a “massage parlour”) are properly considered a common-bawdy house.<sup>58</sup> Further, the word “prostitution” in the definition of common bawdy-house is not limited to cases of sexual intercourse or to cases where a person offers his or her body in a passive way. Rather, it also includes physical acts in which a person, in return for payment, actively assists another in achieving sexual gratification.<sup>59</sup>

### *Keeping a Common Bawdy-House*

The *Criminal Code* defines a “keeper” as follows:<sup>60</sup>

“Keeper” includes a person who

- (a) is an owner or occupier of a place,
- (b) assists or acts on behalf of an owner or occupier of a place,
- (c) appears to be, or to assist or act on behalf of an owner or occupier of a place,
- (d) has the care or management of a place, or
- (e) uses a place permanently or temporarily, with or without the consent of the owner or occupier.

Where a place is a common bawdy-house, however, it is not every “keeper” of that place who is liable to be convicted of the offence of keeping a common bawdy-house. In order to constitute this offence, there must be something more than the keeping of a place whose use, by someone other than the accused, makes it a common bawdy-house.<sup>61</sup> The Crown must show that the accused knew that the place which he “kept” was being used for the purpose of prostitution or acts of indecency.<sup>62</sup> The essence of this offence is that the accused knowingly and actively provided a place where the impugned acts could be engaged in.<sup>63</sup>

For example, the owner of a house leased to a tenant who, without the owner’s knowledge, operates it as a common bawdy-house, cannot be convicted of the offence of keeping a common bawdy-house.<sup>64</sup> Where a “keeper” merely permits a place to be used as a common bawdy-house, without taking any part in its actual operation, the section 193(2)(c) offence is available.<sup>65</sup> The latter provision is a lesser, included offence where the offence of keeping a common bawdy-house is charged.<sup>66</sup>

- Where a sole prostitute resorts to a hotel on several occasions for the purpose of prostitution, the entire hotel does not thereby become a common bawdy-house.
- Further, in the absence of evidence that the prostitute resided in a particular room or that on each occasion the same room was used, there is no evidence that even a part of the hotel is a common bawdy-house. Accordingly, a charge of keeping a common bawdy-house against the prostitute must, in these circumstances, be dismissed.<sup>67</sup>
- A woman who uses her residence on a regular basis for the purpose of prostitution keeps a common bawdy-house, notwithstanding that her residence is not used by other prostitutes for this purpose.<sup>68</sup>
- Where the only Crown evidence on a charge of keeping a common bawdy-house is that, on two occasions on the same night, employees of a massage parlour offered to perform indecent sexual acts with male patrons, such evidence is insufficient to establish habitual use and the accused employees must be acquitted.<sup>69</sup>
- Similarly, premises at which a stag party was held one evening, during which several acts of sexual intercourse took place, do not qualify as a common bawdy-house, in the absence of evidence that such premises were used for like purposes on prior occasions.<sup>70</sup>
- A club whose principal business purpose is to provide an outlet for various sexual activities such as group sex or spouse-swapping, where sexual acts occur on the premises, and where sexually oriented literature and paraphernalia are provided to club patrons, is a common bawdy-house within the definition of that term in the *Criminal Code*.<sup>71</sup>

## 1983 Changes and 1984 Amendments

The 1983 Amendments introduced two changes to the scheme of prostitution-related offences in Part V of the *Criminal Code*:

- The former sections 182 and 183, which provided special police powers to enter and search a common bawdy-house for a female present therein, and to question both her and the keeper of the place under oath, were repealed.<sup>72</sup>
- The procuring offences in section 195 were made applicable to persons of *either* sex who are procured for prostitution. Under the former section, only a person who procured *females* for prostitution or illicit sexual intercourse could be convicted of this offence.<sup>73</sup>

In February, 1984, the Minister of Justice tabled Criminal Law Reform Bill (Bill C-19) which included the following proposed amendments to section 195.1 of the *Criminal Code* defining:<sup>74</sup>

“ ‘prostitution’ includes obtaining the services of a ‘prostitute’; and  
 ‘public place’ includes a motor vehicle located in or on a public place.”

While the former provisions were not in force when the Committee’s research was conducted and the latter had not yet been enacted, the findings of

the National Survey on Juvenile Prostitution provide documentation concerning the nature of the activities which may be affected by the enforcement of these proposed changes to the *Code*.

## Limitations of Existing Provisions

"Juvenile prostitution" has no specific status in Canadian law. Rather, it is dealt with under more general legislation pertaining, at the provincial level, to child welfare, and at the federal level, to the regulation of prostitution generally. A young prostitute who, by reason of his or her age, is technically a "child" under the relevant child welfare legislation may be considered "in need of protection" and thus be eligible for services provided by child welfare authorities in that locality. With the repeal of the *Juvenile Delinquents Act*, he or she can no longer be deemed a "juvenile delinquent". For the young prostitute who neither seeks nor is amenable to institutional help, as documented by the findings of the National Juvenile Prostitution Survey conducted by the Committee, the protection the law affords is tenuous.

The phenomenon of juvenile prostitution fits very uncomfortably into the existing framework of sexual and prostitution-related offences in the *Criminal Code*, with respect both to the prostitute and to his or her "patron". That young prostitutes are typically 14 or older, and hence capable of giving a valid legal consent to most forms of sexual conduct, renders the sexual offences in the *Criminal Code* difficult to apply. On the other hand, the prostitution-related offences in the *Criminal Code* are directed not at prostitution *per se*, but rather at its undesirable manifestations, for example, the public nuisance caused by flagrant solicitations on city streets, and the unacceptable economic coercion endemic in the practices of procuring (pimping) and "living on the avails of prostitution". Moreover, once a person who engages in prostitution becomes subject to the adult criminal justice system (this age is currently 18),<sup>75</sup> he or she is viewed more as an offender than as a victim. In Ontario, for example, the legal principles and maximum sentences which apply to the offence of "procuring" (namely, acting as a pimp<sup>76</sup>) are the same whether the person alleged to have been procured is 16 or 66. In the Committee's judgment, Canadian criminal law has, in this context perhaps more than in others, failed to make the necessary legal distinctions between the sexually autonomous adult and the sexually vulnerable young person.

That the sexual offences in the *Criminal Code* are for the most part inappropriate in the context of juvenile prostitution was adverted to earlier; there are several reasons why this is so. First, the great majority of juvenile prostitutes are 14 or older, and hence are capable under the law of giving a valid consent to most forms of sexual conduct. Second, where a female prostitute is, say, 15 years-old, and is paid by a "trick" to have sexual intercourse with him, she would likely be considered of "unchaste character", thus rendering a section 146(2) conviction against the trick difficult to secure.<sup>77</sup> Third, the section 167 offence of "householder permitting defilement" provides a sanction only



against the *owner, occupier, or controller of premises* who permits a *female* to have *illicit sexual intercourse*. Consequently, it has no relevance to male prostitution, to female prostitution involving acts other than sexual intercourse, or to the very prevalent practice of juveniles prostituting themselves within the confines of the trick's automobile.<sup>78</sup> As noted, Bill C-19 tabled in February, 1984 defines a "public place" to include "a motor vehicle located in or on a public place." Finally, although the offence of "gross indecency" could be charged, this offence effectively requires first-hand evidence of the nature of the sexual act(s) engaged in. Needless to say, neither the trick nor the young prostitute is apt to oblige the Crown in this regard.

That the substantive sexual offences in the *Criminal Code* are not intended, and do not effectively serve, to regulate juvenile prostitution is clear. Likewise, **on the basis of its review of the prostitution-related offences in the *Criminal Code*, the Committee concludes that these provisions are inadequate by themselves to alter the fundamental dimensions of the problem of juvenile prostitution. As the Committee's research findings given in this section of the Report clearly show, not only are additional amendments to the *Criminal Code* warranted, but it is evident that community and social services must be considerably strengthened in order to respond to the needs and situation of these youths.**

Juvenile prostitutes follow a way of life unknown to most Canadians. They are living for the moment selling their bodies for sexual purposes. They have broken with their families, have little education and few job skills, and have a dangerous, financially rewarding and fast-paced lifestyle. Most of these young prostitutes are involved in a way of life which they cannot readily relinquish, and which, the longer they engage in it, will likely preclude their turning to non-deviant careers.

These youths grow up in families coming from all walks of life; their experience in this respect precludes their being stereotyped. The families of some of these youths are poor, others have average incomes, and in a few instances, their parents are affluent. Some of these youths come from broken homes or have been placed with foster parents; others have grown up in happy and stable families.

What these youths have in common is that, for different reasons, many of them as children had run away from home. The majority of these youths are early drop-outs from school. Before they leave home, few have had part-time jobs and when they separated from their families, most had not tried to obtain conventional types of work. A career in prostitution becomes a means of easily earning an income well above that which they feel that they can otherwise obtain. In their new way of life, they enjoy the excitement and vibrancy of the street, and while most quickly became "streetwise", they are typically immature and unrealistic with respect to the harms they are incurring to themselves and in relation to their aspirations for the future. With few exceptions, their hopes for the future are fantasies unlikely to be realized.

At different times in their lives, most of these youths have been in contact with different branches of public services. These services have included: child protection agencies; family and criminal courts; the police; medical services; probation and correctional services; and community associations and agencies. Despite, or perhaps even because of having had these contacts, few of these youths have turned directly to these services in order to help them to make a fresh start in another career.

Many of these juvenile prostitutes have also been at one time or another in conflict with the law. These encounters have not served to deter them from continuing their work as prostitutes. The prospects of their being charged or convicted of soliciting or other offences are seen as risks associated with the job.

There are no instant solutions. As indicated in its recommendations given in Chapter 3, the Committee believes that if the problem of juvenile prostitution in Canada is to be contained, and reduced, then this outcome is only likely to be realized by the provision of relevant career alternatives for these youths and by a more open public acknowledgment of the broader social issues creating this problem.

## References

### Chater 42: The Law Relating to Juvenile Prostitution

- <sup>1</sup> *Westendorp v. The Queen* (1983), 2 C.C.C. (3d) 330 (S.C.C.).
- <sup>2</sup> In addition to rendering the Calgary prostitution by-law of no force or effect, the Supreme Court of Canada judgment in *Westendorp* effectively nullified comparable by-laws in Halifax, Niagara Falls, Edmonton, and Vancouver. With respect to the Montreal prostitution by-law, see *Goldwax v. City of Montreal* (1981), 68 C.C.C. (2d) 548 (Que. S.C.). The *Goldwax* case has been granted leave to appeal to the Supreme Court of Canada, but will not be argued until the fall of 1984. But see *R. v. Kalaman* (1982), 9 W.C.B. 235 (Sask. Prov. Ct.), which was decided shortly before the Supreme Court handed down its decisions in *Westendorp*.
- <sup>3</sup> A person convicted of an offence punishable on summary conviction is liable to a fine of not more than \$500, or to imprisonment for six months, or to both: see *Cr. Code*, s. 722(1).
- <sup>4</sup> S.C. 1972, c. 13, s. 15.
- <sup>5</sup> Formerly s. 175(1)(c) of *Cr. Code*. The former s. 175(1)(c) offence was repealed in 1972 by S.C. 1972, c. 13, s. 15.
- <sup>6</sup> *R. v. DiPaola* (1978), 43 C.C.C. (2d) 199 (Ont. C.A.). See also *R. v. Lantay*, [1966] 3 C.C.C. 270 (Ont. C.A.); *R. v. DeMunck*, [1918] 1 K.B. 635 (C.C.A.); and *R. v. Webb*, [1963] 3 W.L.R. 638 (C.C.A.).
- <sup>7</sup> *R. v. DiPaola*, *ibid.*
- <sup>8</sup> *Ibid.*
- <sup>9</sup> *Hutt v. The Queen* (1978), 38 C.C.C. (2d) 418 (S.C.C.).
- <sup>10</sup> *Ibid.*, See also *R. v. Rolland* (1975), 27 C.C.C. (2d) 485 (Ont. C.A.).
- <sup>11</sup> *R. v. Whitter* (1981), 64 C.C.C. (2d) 1 (S.C.C.).
- <sup>12</sup> *Ibid.*
- <sup>13</sup> *R. v. DiPaola*, *supra*, note 6.
- <sup>14</sup> *R. v. Obey* (1973), 11 C.C.C. (2d) 28 (B.C.S.C.). But see *R. v. Patterson* (1972), 9 C.C.C. (2d) 364 (Ont. Co. Ct.).
- <sup>15</sup> *R. v. Obey*, *ibid.*
- <sup>16</sup> *R. v. Dudak* (1978), 41 C.C.C. (2d) 31 (B.C.C.A.).
- <sup>17</sup> *R. v. DiPaola*, *supra*, note 6.
- <sup>18</sup> *Cr. Code*, s. 179(1).
- <sup>19</sup> *Hutt v. The Queen*, *supra*, note 9.
- <sup>20</sup> *R. v. DiPaola*, *supra*, note 6.
- <sup>21</sup> *Westendorp v. The Queen* (1983), 2 C.C.C. (3d) 330 (S.C.C.).
- <sup>22</sup> See *R. V. Munroe* (1983), 9 W.C.B. 454 (Ont. C.A.), in which the Crown's loitering prosecution was unsuccessful.
- <sup>23</sup> *Supra*, note 11.
- <sup>24</sup> *Ibid.*, at 6.
- <sup>25</sup> *R. v. Barrie* (1975), 25 C.C.C. (2d) 216 (Ont. Co. Ct.). See also *R. v. Babcock* (1974), 18 C.C.C. (2d) 175 (B.C.C.A.); and *R. v. Braithwaite* (1981), 49 N.S.R. (2d) 10 (C.A.).
- <sup>26</sup> *Cr. Code*, s. 179(1).
- <sup>27</sup> *R. v. Robinson* (1948), 92 C.C.C. 223 (Ont. C.A.).



- <sup>28</sup> *Ibid.*
- <sup>29</sup> *R. v. Simpson* (1959), 124 C.C.C. 317 (B. C. Co. Ct.).
- <sup>30</sup> *Ibid.*
- <sup>31</sup> *R. v. Cline* (1982), 65 C.C.C. (2d) 214 (Alta. C.A.).
- <sup>32</sup> *Cr. Code*, s. 195(3). See *R. v. Turner* (1972), 8 C.C.C. (2d) 76 (B.C.C.A.).
- <sup>33</sup> *Cr. Code*, s. 195(4).
- <sup>34</sup> *Fisette v. The Queen* (1959), 32 C.R. 281 (Que. Q.B.).
- <sup>35</sup> *R. v. Celebrity Enterprises Ltd.* (1977), 41 C.C.C. (2d) 540 (B.C.C.A.).
- <sup>36</sup> *Ibid.*, See also *Shaw v. D.P.P.*, [1962] A.C. 220 (H.L.).
- <sup>37</sup> *Shaw v. D.P.P.*, *ibid.*
- <sup>38</sup> *Re Gayle and The Queen* (1981), 59 C.C.C. (2d) 127 (Alta Q.B.).
- <sup>39</sup> (1965), 48 C.R. 344 (Que. Q.B.).
- <sup>40</sup> *R. v. Murphy* (1981), 60 C.C.C. (2d) 1 (Alta. C.A.).
- <sup>41</sup> *R. v. Clemens* (1980), 52 C.C.C. (2d) 259 (B.C.C.A.). See also *R. v. Perron*, [1969] 1 C.C.C. 266 (Que. Q.B.). But see *R. v. Fleming* (1960), 129 C.C.C. 423 (Ont. C.A.).
- <sup>42</sup> *Fisette v. The Queen*, *supra*, note 34.
- <sup>43</sup> *Ibid.*
- <sup>44</sup> *Ibid.*, at 284.
- <sup>45</sup> *Supra*, note 25.
- <sup>46</sup> *Ibid.*, at 15. See also *R. v. Odgers* (1978), 37 C.C.C. (2d) 554 (Alta. C.A.).
- <sup>47</sup> *Cr. Code*, s. 194. See also ss. 180, 181 and 184 of the *Cr. Code*.
- <sup>48</sup> *Cr. Code*, s. 179(1).
- <sup>49</sup> [1968] 2 C.C.C. 247 (S.C.C.).
- <sup>50</sup> *Ibid.*, at 250.
- <sup>51</sup> See, e.g., *R. v. Cohen*, [1939] 1 D.L.R. 396 (S.C.C.); and *R. v. Miket* (1938), 70 C.C.C. 202 (B.C.C.A.).
- <sup>52</sup> See, e.g., *R. v. Sorko*, [1969] 4 C.C.C. 241 (B.C.C.A.); *Theirlynck v. The King* (1931), 56 C.C.C. 156 (S.C.C.); and *R. v. Roberts* (1921), 36 C.C.C. 381 (Alta. C.A.).
- <sup>53</sup> See, e.g., *R. v. Davidson* (1917), 28 C.C.C. 44 (Alta. C.A.); *R. v. James*, (1915), 25 C.C.C. 23 (Alta. C.A.); and *R. v. Clay* (1946), 88 C.C.C. 36 (Que. K.B.).
- <sup>54</sup> *R. v. Pierce and Golloher* (1982), 66 C.C.C. (2d) 388 (Ont. C.A.).
- <sup>55</sup> *R. v. McLellan* (1980), 55 C.C.C. (2d) 543 (B.C.C.A.).
- <sup>56</sup> *R. v. Mason* (1981), 59 C.C.C. (2d) 461 (Ont. Prov. Ct.).
- <sup>57</sup> *R. v. Mason*, *ibid.*, But cf. *Pitchford and Cook v. The Queen* (1982), 25 C.R. (3d) 149 (Ont. C.A.).
- <sup>58</sup> *R. v. Laliberte* (1973), 12 C.C.C. (2d) 109 (Que. C.A.).
- <sup>59</sup> *R. v. Lantay*, *supra*, note 6; *R. v. DeMunck*, *supra*, note 6; *R. v. Webb*, *supra*, note 6; and *R. v. Turkiewich* (1962), 133 C.C.C. 301 (Man. C.A.).
- <sup>60</sup> *Cr. Code*, s. 179(1).
- <sup>61</sup> *R. v. Kerim*, [1963] 1 C.C.C. 233 (S.C.C.).
- <sup>62</sup> *R. v. Baskind* (1975), 23 C.C.C. (2d) 368 (Que. C.A.); *R. v. Catalano* (1977), 37 C.C.C. (2d) 255 (Ont. C.A.).
- <sup>63</sup> *R. v. McLellan*, *supra*, note 53. Cf. *R. v. Maclaren* (1982), 1 C.C.C. (3d) 573 (Ont. Co. Ct.).
- <sup>64</sup> *R. v. Kerim*, *supra*, note 61.
- <sup>65</sup> But cf. *R. v. Wong* (1977), 33 C.C.C. (2d) 6 (Alta. C.A.).
- <sup>66</sup> *R. v. Lafreniere*, [1965] 1 C.C.C. 31 (Ont. H.C.).
- <sup>67</sup> *R. v. Broccolo* (1976), 30 C.C.C. (2d) 540 (Ont. Prov. Ct.).
- <sup>68</sup> *R. v. Worthington* (1972), 10 C.C.C. (2d) 311 (Ont. C.A.).
- <sup>69</sup> *R. v. Ikeda* (1978), 42 C.C.C. (2d) 195 (Ont. C.A.).

<sup>70</sup> *R. v. Evans* (1973), 11 C.C.C. (2d) 130 (Ont. C.A.).

<sup>71</sup> *Pitchford and Cook v. The Queen*, *supra*, note 55.

<sup>72</sup> *An Act to amend the Criminal Code in relation to Sexual Offences and other Offences against the Person*, S.C. 1980-81-82, c. 125, s. 12.

<sup>73</sup> *Ibid.*, S.C. 1980-81-82, c. 125, ss. 11, 13.

<sup>74</sup> Bill C-19 (1984), section 48.

<sup>75</sup> *The Young Offenders Act*, S.C. 1980-81-82 c. 110.

<sup>76</sup> *Cr. Code*, s. 195.

<sup>77</sup> One of the elements of the s. 146(2) offence is that the female in question be "of previously chaste character".

<sup>78</sup> Comparable difficulties beset the section 166 offence of "parent or guardian procuring defilement".





## Chapter 43

# Social Background

The design of the survey in which information was obtained from 229 juvenile prostitutes working on the streets in eight cities across Canada is described in this chapter and findings are given from this source concerning the social and family backgrounds of these youths.

## Design of Survey

In its review of existing Canadian research and literature,<sup>1-14</sup> the Committee found that these sources were of limited use in affording guidance concerning the situation of juvenile prostitutes. While there is an extensive foreign literature concerning many aspects of these issues, there is no surety that the findings of these studies accurately reflect the conditions which prevail on Canadian streets with respect to prostitution.

Prior to the development of the survey, the Committee considered contacting various social service agencies that came in contact with young prostitutes, and eliciting responses from workers concerning their perceptions of, and experiences with, these youths. This approach would have had the advantage of relying upon professionals who could have provided a certain amount of information; however, such professionals seldom deal with juvenile prostitutes in a setting that gives them a genuine experience of the prostitutes' working environment or lifestyle; it was also unknown whether the persons whom these workers knew were typical of juvenile prostitutes. Accordingly, this option was discarded in favour of obtaining information directly from young persons who were involved in prostitution.

In adopting this approach, it was unknown whether youths on the street would be prepared to give up a substantial amount of their time (that they might otherwise have used to earn money) without remuneration to answer a series of very personal questions. These initial misgivings were allayed during the interviews undertaken in the development of the survey's protocol when it was found that almost all of the young prostitutes contacted were willing to be interviewed. The protocol drafted for this study consisted of 244 questions

which sought to find out as much as possible about these youths and the persons with whom they associated. Detailed questions were included in order to provide documentation concerning a number of salient legal issues, such as the methods by which these youths approached and negotiated with clients. The purpose of this section of the survey was to find out whether juvenile prostitutes generally behave in a manner that is "pressing and persistent", and hence, whether the offence of soliciting (section 195.1 of the *Criminal Code*) is adequate to deal with the problem of street prostitution.

The survey was also designed to enable juvenile prostitutes to relate their experiences, air their views and tell their own stories. Throughout the survey, the youths were asked to express their feelings and opinions and to make recommendations concerning the provision of helping services that would be most useful to young persons working on the street. Since these youths usually have little opportunity to make their problems known, the Committee believes it is important that their voices should be heard. They are often perceived as a nuisance, as persons who are too lazy to seek other forms of employment, as individuals who have freely chosen an immoral, if not a criminal lifestyle, as an "undesirable element", or as some amorphous "social problem". By asking these boys and girls to speak for themselves, the Committee hoped to learn the truth about them.

In developing the survey, the Committee drew upon the valuable experience of a police officer seconded from the Metropolitan Toronto Police Force. This colleague, who served as a Research Associate to the Committee, had had extensive experience in working with young prostitutes; resulting from this guidance, the survey included questions relating to the youths' introduction and entry into prostitution, their history of running away, the distinctive experiences of male and female prostitutes, their control by pimps, the conduct of tricks and the nature of the violence and risks inherent in street life.

Interviews were conducted between February, 1982 and July, 1983 in eight cities located in seven provinces. Questionnaires were completed for 229 youths of both sexes. In order to be eligible for participation, it was necessary for the boy or girl to be no older than 20, and to have performed at least one sexual act in exchange for money, food, shelter, drugs, alcohol or some other valuable consideration (i.e., to have turned at least one trick). Most of the interviews were initiated by approaching youths on the street in areas frequented by prostitutes. In some instances, youths were contacted at street shelters and drop-in centres. *The primary focus for the investigation was on children and youths involved in prostitution at the street level* (the lowest echelon in the hierarchy of prostitution). *A few youths were interviewed who had been involved both in street and massage parlour prostitution; however, these cases constituted the exception rather than the rule.* As a result, findings were not obtained from juvenile prostitutes who may have worked primarily in other locations.

The sampling technique employed was a combination of quota and snowball methods. Because it was recognized that there were different categories of



prostitution and in order to obtain sufficient information to document the experiences of these sub-groupings, the quota set for this study was a total of 200 completed interviews. Snowball sampling denotes the contacting of new subjects on the basis of referrals made by persons who had already been interviewed. Accordingly, each respondent was asked to refer a friend who was also involved in "the life" to the researchers for an interview. Each youth was told the purpose of the survey, informed that the researchers were under contract with respect to the confidentiality of the information obtained, and asked to sign a consent form permitting the use of the information by the Committee.

The interviews were held wherever the youths felt most comfortable. Some youths were concerned that if their peers, customers or pimps saw them being interviewed, it might be assumed that they were acting as police informants and that they might suffer violence or ostracism as a result. At times, then, it was necessary to conduct the interviews away from the downtown areas in which most of the young prostitutes worked, often in such diverse locations as coffee shops, strip clubs, bars, public lavatories, street corners, cars, motel rooms and social service agencies.

The Committee acknowledges the contribution of the youths who participated in the survey. Their participation required patience to submit to lengthy and intensely personal interviews, and in many instances, considerable courage, since they may have risked violence at the hands of their pimps for failing to meet their daily quotas.

## Age and Sex

Of the 229 juvenile prostitutes interviewed, 145 were females (63.3 per cent) and 84 were males (36.7 per cent); the latter group included three transsexuals (biological males who considered themselves to be females and who dressed in the attire of females). Of the girls, 106 (73.1 per cent) stated that they were heterosexuals, while eight (5.5 per cent) said that they were lesbians, and 28 (19.3 per cent) considered themselves to be bisexual. Two of the girls indicated that they were undecided about their sexuality. In contrast, only 19 males (22.6 per cent) claimed to be heterosexual, while 26 (31.0 per cent) said that they were homosexual and another 26 professed to be bisexual. Three males (3.6 per cent) were transsexuals, while another three stated that they were transvestites. Seven boys stated that they were undecided about their sexuality.

That there is a discrepancy between the proportions of male and female youths who reported being heterosexual is not surprising since male prostitutes typically cater to a clientele which is almost exclusively homosexual. Many of these males said that they had first been drawn to street life because, as homosexuals, they had been unable to find acceptance in any other milieu; they reported having been rejected or made to feel alienated at home and school when, in their early adolescence, they had become aware of their tendency to



feel attracted to other males. Too young to frequent “gay bars”, many of these male youths had turned to the street as the only place where they believed that they could meet persons of like sexual preference, and where they could escape the hostility and derision of their families and peers. Other males adamantly denied being homosexual, insisting that they were “straight hustlers.” These youths maintained that they engaged in prostitution only because it was an easy way to make quick money; they professed feelings of contempt for their tricks, whose homosexuality they regarded with disgust.

While the average ages of male (18.0 years) and female (17.6 per cent) juvenile prostitutes were comparable, proportionately more of the girls (27.6 per cent) than the boys (13.1 per cent) were 16 years-old or younger when they were interviewed.

Age	Males		Females		Total	
	Number	Per Cent	Number	Per Cent	Number	Per Cent
14 years	1	1.2	5	3.4	6	2.6
15 years	3	3.6	11	7.6	14	6.1
16 years	7	8.3	24	16.6	31	13.5
17 years	19	22.6	27	18.6	46	20.1
18 years	22	26.2	28	19.3	50	21.8
19 years	17	20.2	30	20.7	47	20.5
20 years	15	17.9	18	12.4	33	14.4
Not reported	—	—	2	1.4	2	0.9
TOTAL	84	100.0	145	100.0	229	99.9*

\*Rounding error

The Committee believes that a number of these youths were in fact younger than their reported ages. While youthfulness is a desirable and marketable characteristic on the street, and prostitutes often tend to understate their ages when negotiating with tricks, the Committee’s researchers suspected that some of the youths overstated their ages when they were interviewed. The explanation may be that the youths may have perceived the interviewers as figures of authority who might report them to child welfare agencies if their true ages were given. Also, the youths may have feared that if they gave their true ages, this information might become known on the street, thus making them subject to harassment by other prostitutes, many of whom resent having to compete with younger boys or girls.

## Family Background

About four in five males (79.8 per cent) and females (85.5 per cent) stated that they were born in Canada. Fourteen boys (16.7 per cent) and 20 girls (13.8 per cent) were born outside of Canada. (The responses of three males and one female were missing). Almost half of the males (46.4 per cent) and a third of the females (34.5 per cent) said that the major part of their childhood

had been spent in a place other than their place of birth. Two in three of the youths (63.3 per cent) came from households in which their parents were married. About seven in 10 (68.5 per cent) had grown up in homes with both parents having been present (i.e., parents married or living together). During their childhood and adolescence, slightly more than a quarter (26.2 per cent) had parents who were divorced or separated.

Marital Status of Parents	Males (n=84)	Females (n=145)
	Per Cent	Per Cent
Married	66.7	61.4
Living together	2.4	6.9
Separated	9.5	13.1
Divorced	20.2	11.0
Widowed, other	1.2	5.5
Not reported	—	2.1
TOTAL	100.0	100.0

Between when they had grown up while living with their parents and when they were interviewed, 18 of the marriages of the males' parents and 28 of the marriages of the females' parents had broken up. **When they were interviewed, the total number of youths in whose families there had been a marital breakup (divorce, separation or death) was 112 (48.9 per cent), consisting of 44 boys (52.4 per cent), and 68 females (46.9 per cent).**

The juvenile prostitutes were asked if, while they were growing up, either of their parents had been away from home for extended or regular periods of time. The phrase "for extended or regular periods" was left for them to interpret on the basis of their own recollections and judgment.

Parent Absent From Home For Regular or Extended Periods	Males (n=84)	Females (n=145)
	Per Cent	Per Cent
Mother	21.4	21.4
Father	44.0	44.8

The experiences of both males and females were almost identical with respect to parental absence. In each instance, over twice as many fathers as mothers had been absent from home for regular or extended periods of time. Of the youths who said that their mothers had been absent from the home, half (49.0 per cent) attributed the absence to employment-related reasons, such as seasonal work, or working shifts, days, evenings or nights. Half (51.0 per cent) of the youths whose fathers had been away from home cited their fathers' employment as a cause of the absence. Seasonal employment accounted for slightly less than a third (30.4 per cent) of the paternal absences. One in five (19.2 per cent) of the youths' parents (38 fathers and six mothers) was away

from home because of a marital separation. Other reasons for parents being away from home included: drinking binges; hospitalization; service in the armed forces; imprisonment; and sending the boy or girl to stay with their grandparents.

Most of these youths had grown up in families in which one or other of their parents had been employed. About three in four of their fathers (73.9 per cent) had some form of employment, and among those for whom information was available, most were reported to have had jobs (92.3 per cent). Over half of the youths (54.5 per cent) reported when they were growing up that their mothers had also had jobs.

Employment Status of Parents	Mothers (n=229)	Fathers (n=229)
	Per Cent	Per Cent
Self-employed	0.4	6.6
Employed full-time	33.6	59.4
Employed part-time	20.5	7.9
Other (homemaker, student, retired)	31.9	2.1
Unemployed	3.1	3.9
Not reported, unknown	10.5	20.1
TOTAL	100.0	100.0

There was a somewhat higher rate of unemployment among both the mothers and fathers of the girls than among those of the boys; however, in each case, the number of parents in question was relatively small. In half of the families (51.2 per cent) of the boys and in over a third (37.2 per cent) of the families of the girls, both parents had been employed during their childhood. None of the boys and nine of the girls indicated that when they had been growing up, neither of their parents had been unemployed, but of these nine girls, only two had come from families in which both of their parents were employed. Overall, the great majority of these juvenile prostitutes were raised in homes in which at least one parent had had some form of employment.

Another measure of the economic situation of the youths' families is indicated by the proportion of their parents who had received some form of government financial support. These sources included: municipal and provincial welfare; unemployment insurance; worker's compensation benefits; disability payments; and other (e.g., Children's Aid Society payments).

A substantial proportion of female juvenile prostitutes, about a third, had grown up in homes in which one or both of their parents had at one time been recipients of government financial support. In situations where welfare pay-



Received Government Financial Support	Males (n=84)	Females (n=145)
	Per Cent	Per Cent
Mother	23.9	33.1
Father	10.9	31.2

ments had been provided, the circumstances of these families would also presumably have been known to the staff of these agencies. In contrast to the circumstances of young female juvenile prostitutes, only about one in nine of the boys (10.9 per cent) had grown up in a home in which his father had been the recipient of government financial assistance.

The findings concerning the educational attainments of the youths' parents indicate that proportionately more of the mothers (42.8 per cent) and fathers (47.6 per cent) of male juvenile prostitutes had completed high school and/or had taken some form of post-secondary education (technical college, college, university) than had the parents of female juvenile prostitutes (mothers, 35.9 per cent; fathers, 25.5 per cent). The findings suggest that more of the young males than young females had grown up in socially and economically advantaged backgrounds.

**What stands out from these findings is that a large proportion of these youths had grown up in families having a middle class, and in a few instances, an affluent standard of living.** This conclusion is further supported by their replies when they were asked whether the basic necessities, such as food, clothing and shelter, had been provided for by their parents. Three in four (76.4 per cent) said that these needs had been completely met, about one in seven (13.5 per cent) reported that these necessities had not always been fully provided for, and information on this point was unknown for the remainder.

## Alcohol and Drugs

It has sometimes been suggested that juveniles who turn to prostitution tend to come from socially disadvantaged backgrounds or from families in which deviant parental behaviour exerted an unwholesome or even traumatic influence on the children's early development. One of the forms of aberrant behaviour most frequently cited as a possible source of early psychological scarring in children who later became prostitutes is parental alcohol or drug abuse. **The Committee's findings indicate that alcoholism and drug abuse are not factors that are invariably present in the families of young prostitutes, although a heavy use of alcohol was reported with respect to a relatively large proportion of the youths' fathers.**

About three in five juvenile prostitutes (58.5 per cent) reported that neither of their parents made heavy (i.e., excessive) use of alcohol or drugs. On the other hand, six boys (7.1 per cent) and 12 girls (8.3 per cent) stated that

both their mother and father were heavy users of these substances. Five boys (6.0 per cent) and 10 girls (6.9 per cent) said that only their mothers were abusers of drugs or alcohol, while 21 boys (25.0 per cent) and 41 girls (28.3 per cent) stated that only their fathers were heavy users.

Of the 11 males who stated that their mothers were heavy alcohol users, two said that this usage characteristically involved binges, six stated that their mothers were addicted and one indicated that his mother both was addicted and engaged in alcoholic binges; two boys did not specify the nature of their mothers' heavy alcohol use. Five of the 27 males whose fathers abused alcohol said that their fathers typically went on binges, while 12 of these fathers were alcohol addicts and four both went on binges and were addicted; six males did not offer any characterization of their fathers' heavy use of alcohol.

Of the 20 girls who stated that their mothers were heavy alcohol users, six said that their mothers went on alcoholic binges, eight described their mothers as addicts and four claimed that their mothers combined addiction with binging; two girls did not indicate how their mothers misused liquor. Fifty-three girls stated that their fathers were heavy alcohol users, and of these, 15 said that their fathers' use involved going on binges, 24 reported that their fathers were addicted, and 10 indicated that their fathers both went on binges and were addicted; four of these 53 girls did not specify the nature of their fathers' heavy alcohol use.

## Dropping out of School

**The formal educational achievements of the young prostitutes stand in stark contrast to those of their parents.** Over two in five (42.3 per cent) had not progressed beyond junior high school, and two in three (66.8 per cent) had not completed more than one year of high school. In contrast, approximately a quarter (27.9 per cent) of their mothers and about a third (31.8 per cent) of their fathers had not completed junior high school. Whereas about two in five (38.4 per cent) of their mothers and a third (33.6 per cent) of their fathers had completed high school or some form of post-secondary education, only about one in seven (13.5 per cent) of the juvenile prostitutes had attained a comparable level of education (i.e., had completed either grades 12 or 13, or received some college education). None of the youths had been to university.

Clearly, it is inappropriate to characterize the educational attainments of a group of youths without taking their ages into account. It would be misleading, for instance, to conclude that these youths had typically only progressed to Grade 10 if most of them were no older than the average Grade 10 students. In this regard, an estimate was made in relation to how many of them had or had not advanced as far in their studies as youths of the same age normally might be expected to have achieved.

Table 43.1

## Ages of Juvenile Prostitutes and Highest Completed School Grade

## Male Juvenile Prostitutes

Highest Grade Completed	Ages of Young Males							
	14	15	16	17	18	19	20	Total
6	—	—	1	—	—	1	—	2
7	1	—	—	1	1	1	—	4
8	—	1	4	4	4	1	1	15
9	—	—	2	2	5	3	—	12
10	—	1	—	7	6	4	3	21
11	—	1	—	2	4	1	5	13
12	—	—	—	—	1	4	4	9
13	—	—	—	2	1	—	—	3
Some (community) college	—	—	—	—	—	2	1	3
Response missing	—	—	—	1	—	—	1	2
TOTAL	1	3	7	19	22	17	15	84

## Female Juvenile Prostitutes

Highest Grade Completed	Ages of Young Females							
	14	15	16	17	18	19	20	Total
3	—	—	—	—	—	1	—	1
6	—	—	1	—	—	—	—	1
7	—	—	2	1	1	1	—	5
8	4	4	5	4	6	3	2	28
9	1	2	4	5	5	6	4	27
10	—	3	8	10	8	4	2	35
11	—	2	4	6	4	8	6	30
12	—	—	—	1	4	6	4	15
13	—	—	—	—	—	1	—	1
TOTAL	5	11	24	27	28	30	18	143

*National Juvenile Prostitution Survey.* Level of education was not reported for two young females.

Table 43.1 presents information concerning the highest school grade completed by each youth listed according to his or her age. Provincial statutes require that children be enrolled in school either by age six or seven.<sup>15</sup> Hence, it may be assumed that most or all of the youths began their formal education when they were six or seven years-old, and completed their first year of schooling when they were between ages six and eight. Drawing upon this information, it is then possible to estimate the proportion of these youths who had received as much education as other children of comparable ages would usually have been expected to have received (the estimate does not take into account the possibility that some of the youths either failed or “skipped” one or more years of schooling). On this basis, it is conservatively estimated that 51 males (60.7



per cent) and 79 females (54.5 per cent) had received less education than would be usual for youths their age, while only 32 boys (38.1 per cent) and 64 girls (44.1 per cent) had completed the number of grades usually attained by persons their age.

When they were interviewed, most of the youths were no longer attending school: 181 (79.0 per cent) said that they had discontinued their studies, while 47 (20.5 per cent) were still receiving some form of education; one response (0.4 per cent) was missing. Of those who stated that they were still at school, most were not full-time students, but rather, were involved in part-time studies such as night school classes or up-grading courses.

It is not possible to determine what proportion of these youths may ever return to school. However, their lifestyle on the streets is not conducive to this possibility. Even if many were motivated to resume their schooling, they would be likely impeded by such factors as their loss of study skills, alcoholism, drug use, late hours, physical and psychological debilitation, their psychological dependency on their pimps and the efforts of their pimps to dissuade them from taking any action which might enable them to break away from "the life". Many of these youths would also be hampered from returning to school by their poor self-image and their deep-seated conviction that they are incapable of achieving anything for themselves, at school or elsewhere. On the basis of the Committee's findings about their way of life working "on the street" (see Chapter 45), it appears that **most of these youths now have as much formal education as they will ever have. As a result, those who may succeed in breaking away from "the life" are likely to find only poorly paid or menial jobs (a fact of which most are aware, and which undoubtedly encourages them to continue prostituting themselves). Their bleak future prospects constitute one of the most serious social harms associated with juvenile prostitution.**

## Early Sexual Experiences

The juvenile prostitutes were asked about their early sexual experiences, including how old they were when these incidents had occurred, who their partners had been and whether they had been sexually abused when they were growing up. The findings clearly show that in comparison with the accounts given by persons contacted in the National Population Survey, a substantially higher proportion of juvenile prostitutes had had their first sexual experience at a very early age. By the time they reached age seven, about one in nine boys (10.7 per cent) and one in 36 girls had been involved in some type of sexual activity; by age 11, over half of the male juvenile prostitutes (55.2 per cent) and about a third of the female juvenile prostitutes (32.5 per cent) had had a sexual experience. More than three-quarters (76.6 per cent) of the males and almost two-thirds of the females (61.8 per cent) had had a sexual experience by age 13. By age 17, virtually all of the juvenile prostitutes of both sexes had become sexually experienced.

As the findings in Table 43.2 indicate, in comparison with a nationally representative sample of Canadians, juvenile prostitutes had had their initial sexual experiences at a considerably earlier age, and by the time they were adolescents, most reported that they had become sexually experienced. In contrast, and the comparison may not be fully valid since persons of all ages were included in the National Population Survey, only two in five males (40.7 per cent) and over a quarter of females (27.6 per cent) reported having had their first sexual experiences by age 17.

**Table 43.2**  
**Age at which Juvenile Prostitutes had had their**  
**First Sexual Experiences**

Age of First Sexual Experience	Males		Females	
	Juvenile Prostitution Survey (n=84)	National Population Survey (n=1002)	Juvenile Prostitution Survey (n=145)	National Population Survey (n=1006)
	Per Cent	Per Cent	Per Cent	Per Cent
Under age 7	10.7	—	2.8	0.4
7-11 years	44.5	1.5	29.7	0.4
12-13 years	21.4	3.9	30.3	0.9
14-15 years	17.9	11.3	22.6	5.7
16-17 years	2.4	24.0	12.4	20.2
ACCUMULATIVE TOTAL	96.9	40.7	97.8	27.6

*National Juvenile Prostitution Survey and National Population Survey.*

When the juvenile prostitutes were asked to describe their first sexual experiences, 61 boys (72.6 per cent) and 60 girls (41.4 per cent) said that they had been involved in activities that might be described as non-abusive adolescent or pre-adolescent sexual experimentation. These activities varied from "playing house" or "doctor", to mutual oral sex and vaginal penetration. Three males and three females had miscellaneous first experiences, including: "being taken advantage of" at a party while they had been intoxicated; being watched by a voyeur; turning a trick; being fondled by an employer in exchange for money; and being fondled by a homosexual adult whom the youth had met in a downtown area.

In the National Population Survey, it was found that about one in two females and slightly less than one in three males had been victims of unwanted sexual acts (Chapter 6, *Occurrence in the Population*). Fewer than one in five persons of both sexes was an adult when he or she was a victim for the first time of an unwanted sexual act. The findings from the National Juvenile Prostitution Survey closely approximate those of the National Population Survey.



Less than one in four male juvenile prostitutes (22.6 per cent) and two in five female juvenile prostitutes (40.0 per cent) reported that their first unwanted sexual experience had involved the use of threats or force to which they had unwillingly submitted.

**The findings in relation to child sexual abuse indicate that youths who later became juvenile prostitutes were at no more risk when they were growing up than other Canadian children and youths of having been victims of sexual offences. In this regard, it cannot be concluded on the basis of the information available that having been sexually abused as a child was, by itself, a significant factor that accounted for their subsequent entry into juvenile prostitution.**

Before they turned to prostitution, 12 boys (14.3 per cent) and 34 girls (23.4 per cent) reported that their parents had nagged them about their sexual relationships. Six boys (7.1 per cent) and 19 girls (13.1 per cent) claimed to have been involved in an incestuous relationship. Six boys (7.1 per cent) and 34 girls (23.4 per cent) said that they had been raped, while three boys (3.6 per cent) and four girls (2.8 per cent) reported that they had been gang raped. One male stated that he had been "anally raped" (i.e., buggered) by his step-father, one female was admitted to a psychiatric facility for the treatment of a mental disorder stemming from rape trauma, and another female became pregnant after having been the victim of a gang rape. With respect to having become pregnant, 17 girls (11.7 per cent) said that they had given birth to a child, 19 girls (13.1 per cent) had had an abortion and three girls (2.1 per cent) had had miscarriages (one of which had resulted from beatings). Thirteen males (15.5 per cent) reported having suffered in some way as a result of the social stigma attached to homosexuality (e.g, being taunted at school or rejected by parents). Finally, five males (6.0 per cent) and 11 females (7.6 per cent) said that they had been considered promiscuous.

The largest single group (60.3 per cent) with whom these young males and females had had their first sexual experience with consisted of friends and acquaintances. Proportionately, more girls (13.1 per cent) than boys (7.1 per cent) had had their first sexual experience with a person who was in a legal relationship of incest to them. The definition used in this respect is comparable to that specified throughout the Report (see Chapter 7, *Dimensions of Sexual Assault* and Chapter 25, *Elements of the Offences*).

Three in 10 (29.3 per cent) of the juvenile prostitutes' first sexual experiences had been either with a family member, relative or a person who held a position of trust in relation to them (males, 27.4 per cent; females, 30.3 per cent). This proportion is slightly above that documented in the National Population Survey in which one in four (24.8 per cent) of the persons had been victims of unwanted sexual acts by persons who were close to them or were responsible for their welfare.

Forty-six males (54.8 per cent) and 112 females (77.2 per cent) said that they were younger than the person with whom they had their first sexual



Table 43.3

**Type of Association between Juvenile Prostitutes and their  
Sexual Partners in their First Sexual Experience**

Type of Association Between Youth and Partner	Juvenile Prostitutes			
	Males		Females	
	Number	Per Cent	Number	Per Cent
Incest relationship	6	7.1	19	13.1
Other blood relative	9	10.7	11	7.6
Guardianship position	3	3.6	6	4.1
Other family member	2	2.4	7	4.8
Position of trust	3	3.6	1	0.7
Friend/Acquaintance	54	64.3	84	57.9
Other person (known)	2	2.4	4	2.8
Stranger	5	5.9	13	9.0
<b>TOTAL</b>	<b>84</b>	<b>100.0</b>	<b>145</b>	<b>100.0</b>

*National Juvenile Prostitution Survey.* There were four cases which were not listed (one male and three females); these are grouped in the stranger category.

experience. Thirty-two boys (38.1 per cent) and 26 girls (17.9 per cent) said that they were the same age as their first sexual partner, while five males (6.0 per cent) and four females (2.8 per cent) were older than their partners.

The first sexual experience of 36 males (42.9 per cent) and one female (0.7 per cent) was with a person or persons of the same sex as themselves. Forty-six males (54.8 per cent) and 139 females (95.9 per cent) had heterosexual first sexual experiences, while two boys (2.4 per cent) and four girls (2.8 per cent) had their first sexual experience with persons of both sexes. The response of one female was missing.

In the National Population Survey, it was found that the first sexual experience of most persons had been with a member of the opposite sex (males, 95.9 per cent; females, 95.7 per cent). The experience of youths who later became juvenile prostitutes contrasts sharply with that of other Canadians. Proportionately fewer of these young females' initial sexual experiences had involved homosexual behaviour (0.7 per cent versus 4.3 per cent) while the proportion of male youths who later became juvenile prostitutes was over 10 times that reported in the National Population Survey (42.9 per cent versus 4.1 per cent).

Most of these youths were single when they were interviewed: 79 males (94.0 per cent) and 119 females (82.1 per cent). Four boys and 11 girls said that they were living with someone, while an additional four girls stated that

they were living in a common law arrangement. One boy and five girls said that they were separated, three girls had been divorced and one was a widow. Only two youths, both girls, were married.

The extent of these youths' sexual activities as they were growing up contrasts sharply with the reported lack of discussion about sexual matters with their parents. Sixty-three boys (75.0 per cent) and 87 girls (60.0 per cent) stated that their mothers had not discussed the subject of sex with them; only 19 males (22.6 per cent) and 55 females (37.9 per cent) had talked with their mothers about sex. The fathers of 66 males (78.6 per cent) and 111 females (76.6 per cent) had not discussed sexual matters with them, while nine males (10.7 per cent) and 13 females (9.0 per cent) said that their fathers had spoken to them about this subject.

The failure of many of the youths' parents to discuss the subject of sex with them had not shielded them from becoming involved in undesirable sexual experiences. Most of these youths had felt uncomfortable about discussing sexual questions or problems with their parents: 58 males (69.0 per cent) and 85 females (58.6 per cent) said that they had not felt free to approach their mothers with such problems, while 66 males (78.6 per cent) and 104 females (71.7 per cent) had been similarly constrained with respect to their fathers. While it is unknown whether the failure of their parents to communicate openly with them about sex contributed to their sexual naivety and vulnerability, it is clear that the inability of many of the youths to be able to discuss sexual problems with their parents made it difficult for them to resolve sex-related problems, confusions and conflicts which may have contributed in some measure to their entry into "the life".

## Running away from Home

The period of transition between home life and street life was generally characterized by the youths as an attempt to sever themselves from parental authority and influence. For most of the youths, this breach was achieved by the simple expedient of running away from home. **A large majority had run away from home on at least one occasion. Sixty-six males (78.6 per cent) and 108 females (74.5 per cent) stated that they had run away at least once.** On average, females had run away from home more often than males. Among males, two in five (41.7 per cent) had run away once or twice, as compared to one in five (20.7 per cent) of the females; in contrast, about a third (36.9 per cent) of the males said they had run away several times or continually, while over half (53.8 per cent) of the females had done so.

The reasons why these youths had run away from home are listed in Table 43.4 and the means whereby they subsequently supported themselves are given in Table 43.5. The reason most frequently cited by juvenile prostitutes why they had run away from home was their need or desire to escape from family problems; almost three-fifths claimed that this had been at least a principal motivating factor in their decisions to run away. A substantial proportion had

Number of Times Juvenile Prostitutes Had Run Away From Home	Males		Females	
	Number	Per Cent	Number	Per Cent
Once	22	26.2	17	11.7
Twice	13	15.5	13	9.0
Several times	17	20.2	40	27.6
Continually	14	16.7	38	26.2
Had not run away from home	2	2.4	8	5.5
Not reported	16	19.0	29	20.0
TOTAL	84	100.0	145	100.0

run away by the time they were in their early adolescence. Of the 66 males and 108 females who said they had run away, 17 boys (25.8 per cent) and 23 girls (21.3 per cent) had done so by age 10. By age 14, 81.5 per cent of the boys and 75.5 per cent of the girls had run away from home.

Few of these youths had run away from home with the express intention of becoming prostitutes. At that time, about two in five had not known about

**Table 43.4**

**Juvenile Prostitutes' Reasons for Running Away from Home**

Reasons Given For Running Away From Home	Males (n=84)		Females (n=145)	
	Number	Non- Accum. %	Number	Non- Accum. %
Desire for adventure	11	13.1	16	11.0
To explore something new	8	9.5	16	11.0
To meet new persons	5	6.0	9	6.2
To escape family problems	50	59.5	82	56.6
Problems at school	12	14.3	24	16.6
Problems with friends	5	6.0	8	5.5
Attention seeking/rebelling	4	4.8	9	6.2
To escape physical abuse from father	2	2.4	8	5.5
To escape sexual advances from father	—	—	2	1.4
Other	10	11.9	16	11.0



prostitutes and prostitution. Thirty-four males (40.5 per cent) and 56 females (38.6 per cent) said that they had not become aware of prostitution until after they had first run away. Only 19 males (22.6 per cent) and 16 females (11.0 per cent) said that they had been aware of prostitution before they had run away from home for the first time. Eight boys (9.5 per cent) and 21 girls (14.5 per cent) said that they had learned about prostitution at about the time (i.e., in the same year) when they first ran away from home.

**Table 43.5**  
**Juvenile Prostitutes' Initial Sources of Income**  
**When They Ran Away from Home**

Initial Sources of Income when Ran Away from Home	Males (n = 84)		Females (n = 145)	
	Number	Non- Accum. %	Number	Non- Accum. %
Money brought from home	19	22.6	29	20.0
Money borrowed from friends	6	7.1	40	27.6
Living with friends	8	9.5	15	10.3
Panhandling	9	10.7	15	10.3
Prostitution	24	28.6	43	29.7
Stealing	24	28.6	24	16.6
Welfare	2	2.4	5	3.4
Social service agencies	1	1.2	2	1.4
Part-time job	3	3.6	5	3.4
Other	5	6.0	12	8.3

*National Juvenile Prostitution Survey.*

When the youths were asked how they had initially supported themselves after they had left home, about a fifth (21.0 per cent) said they had relied on money that they had brought with them from home. A larger proportion of the girls than the boys said that they had depended on friends: among the girls, 27.6 per cent had borrowed money from friends and 10.3 per cent actually relied on friends, as compared with 7.1 per cent and 9.5 per cent of the the boys, respectively. About one in 10 said that they had panhandled or begged for money, while 28.6 per cent of the males and 16.6 per cent of the females had resorted to stealing. Almost a third (29.3 per cent) said that they had relied on prostitution for money when they ran away. Few had received money from welfare or social service agencies. None had obtained a full-time job and only a few had initially held part-time jobs.

The average lengths of time the youths had stayed away from home varied widely. About a quarter (males, 26.2 per cent; females, 24.1 per cent) had generally stayed away from home for between one and seven days. Six boys (7.1 per cent) and 20 girls (13.8 per cent) said that the average duration of their absence from home was between one and four weeks. A further 23 males (27.4 per cent) and 46 females (31.7 per cent) said that they had left home for between one and six months, while one girl had been absent for seven months. Finally, 11 boys (13.1 per cent) and six girls (4.1 per cent) said that they had run away for periods of a year or more, with one boy stating that he had been away from home for five years.

The National Juvenile Prostitution Survey's findings clearly show that running away from home was an experience shared by most of the youths who later became juvenile prostitutes. For many of them, running away represented an immediate means of escaping from some aspect of their home environment with which they found it impossible to cope, rather than serving as an avenue through which to pursue some positive, long-term goals. This conclusion is consistent with the findings concerning the youths' immediate sources of finance, which indicate a clear lack of planning or preparation on their part, prior to their departure. While their experiences varied considerably after they had run away from home (as did the duration of their absences), this step for most of them represented a complete repudiation of their families. They entered a way of life for which they had none of the experience, skills, preparation, education or training needed to achieve a secure or conventionally self-sufficient existence. This combination of severing themselves from their families combined with their inexperience in other aspects of life created a condition of extreme vulnerability which fostered their transition to street life and to prostitution.

## Memories of Home Life

In addition to obtaining information about the social situation of their families as they were growing up, the youths were also asked for their views about their formative years. They were asked about their strongest memories of their childhood; their *strongest* recollections were requested in order to obtain information which might reveal those aspects of their early lives which they believed may have subsequently influenced them. Because they were not limited to a single recollection, their replies are non-accumulative.

The young prostitutes' strongest recollection was one of continuous fighting or arguments at home: (males, 45.2 per cent; females, 52.4 per cent). About one in three (males, 27.4 per cent; females, 33.1 per cent) mentioned physical abuse. Alcohol abuse was recalled by 21.4 per cent of the males and 33.8 per cent of the females; drug abuse was highlighted by only 3.6 per cent of the boys and 8.3 per cent of the girls. Vivid recollections of sexual abuse were reported by 7.1 per cent of the boys and 21.4 per cent of the girls. A further

Strongest Recollections of Home Life	Juvenile Prostitutes	
	Males (n=84)	Females (n=145)
	Non-Accum. %	Non-Accum. %
Continuous fighting/arguments	45.2	52.4
Alcohol abuse	21.4	33.8
Drug abuse	3.6	8.3
Physical abuse	27.4	33.1
Sexual abuse	7.1	21.4
Sickness in family	11.9	20.0
Strict religious upbringing	13.1	11.0
Happy family/parents together	33.3	23.5
No strong memories	10.7	11.7
Other	17.9	14.5

11.9 per cent of the males and 20.0 per cent of the females listed a family illness as being among their most powerful memories. Recollections of a happy home life were reported by 33.3 per cent of the males and 23.5 per cent of the females. Responses categorized as "other" included memories of: poverty; "coldness, silences and neglect"; moving from place to place; living in various foster homes; having "spent childhood in hospital with polio"; and having "had many fathers". Overall, a larger proportion of the young female prostitutes than that of the young male prostitutes had retained negative recollections about their childhood.

## Summary

1. Of the 229 juvenile prostitutes who were interviewed, 145 were females (63.3 per cent) and 84 were males (36.7 per cent). Three in four females (73.1 per cent) and less than one in four males (22.6 per cent) considered themselves to be heterosexual.
2. Over one in four female juvenile prostitutes (27.6 per cent) and about one in eight male juvenile prostitutes (13.1 per cent) were 16 years-old or younger.
3. About half of the parents of juvenile prostitutes (48.9 per cent) had had a marital breakup either while these youths were growing up or after they had left home.
4. During their childhood, over two in five of their fathers had been away from home for extended or regular periods of time; these absences had involved one in five of their mothers.
5. Three-quarters of their fathers and over a half of their mothers had been employed during the childhood and adolescence of the juvenile prostitutes.



6. A third of the families of female juvenile prostitutes had been recipients of government financial assistance; one in nine of the fathers of male juvenile prostitutes had received some form of public assistance.
7. On average, the parents of male juvenile prostitutes were better educated than those of female juvenile prostitutes. Well over two in five parents (45.2 per cent) of the former and less than a third (30.7 per cent) of the latter had completed high school and/or had some form of post-secondary education.
8. About two in five of the parents of juvenile prostitutes were reported to have been heavy users of alcohol or drugs.
9. Over two in five juvenile prostitutes (42.3 per cent) had not gone beyond junior high school; only a third (33.2 per cent) had completed more than one year of high school.
10. By age 11, over half of the male juvenile prostitutes (55.2 per cent) and a third of female juvenile prostitutes (32.5 per cent) had had an initial sexual experience. More than three-quarters (76.6 per cent) of the males and almost two-thirds (61.8 per cent) of the females were sexually experienced by age 13.
11. In relation to having been sexually abused when they were children, the experience of juvenile prostitutes was similar to that of other Canadian children and youths, (as documented in the National Population Survey). One in five males (22.6 per cent) and two in five females (40.0 per cent) reported that their first sexual experience had involved the use of threats or force.
12. Three in five (60.3 per cent) of these youths' first sexual experiences had been with friends and acquaintances, and less than a third (29.3 per cent) had involved a family member, a relative or a person holding a position of trust to them. The proportion in the latter category was slightly above that (24.8 per cent) documented in the National Population Survey.
13. For less than one in 142 of the girls (0.7 per cent) but for over two in five of the boys (42.9 per cent), their initial sexual experience had been with a member of the same sex.
14. A majority of juvenile prostitutes (76.8 per cent, males; 68.3 per cent, females) stated that they had not discussed sexual matters with their parents.
15. During their childhood and adolescence, three-quarters (75.9 per cent) of the juvenile prostitutes had run away from home at least once. A high proportion of these youths had run away twice or more often.
16. Immediately following running away from home, none had obtained full-time jobs and only one in 29 had obtained a part-time job.
17. Only a minority of juvenile prostitutes recalled that their childhood and adolescence had been happy and untroubled.

In looking back at their childhood, most of these youths recalled a variety of negative experiences that had made a lasting impression on them. More than a quarter of their parents had been separated or divorced during their child-

hood, and subsequently about an equal proportion of their families had experienced a marital breakup. About two in five of these youths had known some form of parental abuse of alcohol or drugs. These danger signals of family conflict indicate that many young prostitutes had come from family backgrounds that were troubled and unhappy, notwithstanding the fact that many had grown up in homes that might otherwise have appeared to have been comfortable, successful, and in some instances, socially advantaged.

The majority of these youths had grown up in homes that had left them scarred with negative and painful memories, conditions that had prompted many of them to run away from home, to drop out of school early, and ultimately, to turn to prostitution as a means of earning their livelihood.

**In light of the findings concerning the high proportion of these youths who had dropped out of school early and who had run away from home, it is clearly evident that existing social services had been ineffective and had provided inadequate protection and assistance. In this respect, there can be no doubt in the Committee's judgment that special programs must be initiated and sufficiently funded to meet their needs. Accordingly, the Committee recommends that:**

**Provincial Child Protection Services develop special programs geared to serve the needs of young prostitutes and to identify the early warning signs of troubled home conditions warranting the provision of special services.**

## References

### Chapter 43: Social Background

- <sup>1</sup> The Committee's general review of bibliographical sources was given in Chapter 1. As indicated by the listing of references in notes 2 — 14, these sources did not serve to identify many references concerning research on the issue of prostitution in Canada. That there is a paucity of such research information available for this country was further confirmed by the Committee's meetings across Canada with persons experienced in working with juvenile prostitutes. The references typically cited related to studies that had been undertaken abroad.
- <sup>2</sup> Axmith, G.M., *Sexually Promiscuous Juvenile Girls in Galt Training School*. Toronto: University of Toronto M.S.W. Thesis, 1963.
- <sup>3</sup> Barnhorst, S.S., *Female Delinquents and the Juvenile Justice System*. Kingston: Queen's University, 1980 (L.L.M. thesis).
- <sup>4</sup> Canada. Department of Justice. *Juvenile Delinquency in Canada. Report of the Committee on Juvenile Delinquency*. Ottawa: Queen's Printer, 1965.
- <sup>5</sup> Clarkson, F.A., History of Prostitution, *Canadian Medical Association Journal*, 41:296-301, 1939.
- <sup>6</sup> Gray, J.H., *Red Lights on the Prairies*. Toronto: MacMillan of Canada, 1971.
- <sup>7</sup> Griffen, B. and J. Martin, *A Preliminary Report on the Problem of Sexual Abuse and Delinquency*. Edmonton: Edmonton Rape Crisis Centre, 1980 (mimeo).
- <sup>8</sup> Laudau, B., The Adolescent Female Offender, *Canadian Journal of Criminology and Corrections*, 17:146-53, 1975.
- <sup>9</sup> Limoges, T., *La prostitution à Montréal*. Montréal: Les Éditions de l'Homme, 1967.
- <sup>10</sup> Pector, J., *Rapport de travail sur la prostitution des mineur-e-s*, Montréal: Bureau de Consultation — Jeunesse, Inc., 1982 (mimeo).
- <sup>11</sup> Nelson, N.A., Prostitution and Genito-infectious Disease Control, *Canadian Journal of Public Health*, 34:251-60, 1943.
- <sup>12</sup> Szabo, D., M. LeBlanc, L. Deslauriers et D. Gagné, Interpretations psycho-culturelles de l'ina-daptation juvénile dans la société de masse contemporaine, *Acta Criminologica*, 1:9-133, 1968.
- <sup>13</sup> Williams, D.H., Commercialized Prostitution and Venereal Disease Control: Results of Suppres-sion of Commercialized Prostitution on Venereal Disease in the City of Vancouver, *Canadian Journal of Public Health*, 31:416-22, 1940.
- <sup>14</sup> Williams, D.H., Suppression of Commercialized Prostitution in the City of Vancouver, *Journal of Social Hygiene*, 27:364-72, 1941.
- <sup>15</sup> The relevant statutes are as follows:  
*Newfoundland*  
*The School Attendance Act*, 1978, S. Nfld. 1978, c. 78, s. 3. (School begins at age six).  
*Prince Edward Island*  
*The School Act*, R.S.P.E.I. 1974, c. S-2, s. 1(b), as am. by S.P.E.I. 1980, c. 48, s. 1(1) (School-ing begins at age seven).  
*New Brunswick*  
*Schools Act*, R.S.N.B. 1973, c. S-5, s. 59(1). (Schooling begins at age seven).  
*Quebec*  
*Education Act*, R.S.Q. 1979, c. I-14, s. 256. (Schooling begins at age six).  
*Ontario*  
*The Education Act*, R.S.O. 1980, c. 129, s. 20. (Schooling begins at age six).



*Manitoba*

*The Public Schools Act*, S.M. 1980, c. 33, s. 258(1)(b). (Schooling begins at age seven).

*Saskatchewan*

*The Education Act*, R.S.S. 1978 (supp.), c. E-0.1, s. 2(g). (Schooling begins at age seven).

*Alberta*

*School Act*, R.S.A. 1980, c. S-3, s. 142(1). (Schooling begins at age six).

*British Columbia*

*School Act*, R.S.B.C. 1979, c. 375, s. 258(1)(b). (Schooling begins at age seven).

*Northwest Territories*

*Education Ordinance*, O.N.W.T. 1976(3), c. 2, s. 96(1). (Schooling begins at age six).

*Yukon Territory*

*School Ordinance*, O.Y.T. 1974(2), c. 14, s. 29. (Schooling begins after a child reaches age six years, eight months).

## Chapter 44

# Becoming a Prostitute

In this chapter, findings from the National Juvenile Prostitution Survey are given concerning how these youths made the transition from their home lives to becoming prostitutes. These findings are illustrated by a number of case studies.

### Initial Awareness and Contacts

The youths in the National Juvenile Prostitution Survey were asked “At what age did you become aware of prostitutes and what they did?” Although all of these youths were then engaged in prostitution, it is apparent that they had not exhibited a striking precocity as children in discovering prostitutes or in learning about what they did. By age 10, 16.7 per cent of the males, and 6.9 per cent of the females had known about prostitution, while by age 13, fewer than half (47.6 per cent of the boys and 40.0 per cent of the girls) had had any knowledge of this occupation. By age 16, however, four in five youths (males, 78.6 per cent; females, 82.8 per cent) knew about prostitutes and prostitution.

The two most frequently cited means by which these youths had learned about prostitution were through the media and some friend or acquaintance who was living downtown. The former source was responsible for providing 28.6 per cent of the males and 23.4 per cent of the females with their first awareness of prostitution (invariably the youths referred to “glamourized” media depictions of prostitutes), while 22.6 per cent of the boys and 30.3 per cent of the girls said that they had first acquired this knowledge through a friend who had been living downtown. Fourteen males (16.7 per cent) and 17 females (11.7 per cent) arrived at their own conclusions deductively after watching prostitutes on downtown streets. Six males (7.1 per cent) and 17 females (11.7 per cent) learned about this vocation from an acquaintance who was a prostitute (these persons included sisters, friends, neighbours, and the mothers of three of the girls). Other sources of learning about prostitution included:

- Living in or visiting areas frequented by prostitutes;
- Being propositioned while in an area frequented by prostitutes;

- A family friend;
- Older siblings who explained prostitution as part of youth's sex education;
- A man whom the girl dated and who later turned out to be a pimp;
- Boy's father, who took him to an area frequented by prostitutes;
- A massage parlour where the girl had been hired;
- Reading a book (girl's father made her read the book in an attempt to frighten her from running away);
- Mother, whom the girl overheard discussing the logging camp where her father worked which was serviced by prostitutes;
- Friends at school;
- Youth workers;
- School sex education.

Prior to working on the streets, about two in three of the youths (males, 61.9 per cent; females, 68.3 per cent) had known at least one prostitute personally. Thirty-five males (41.7 per cent) and 73 females (50.3 per cent) said that the prostitute whom they had known was a friend, six males (7.1 per cent) and 11 females (7.6 per cent) responded that this person was an immediate family member, while one male and three females stated that the prostitute was a relative. Eleven boys (13.1 per cent) and 31 girls (21.4 per cent) said that they had been encouraged by these acquaintances to become prostitutes; 12 boys (14.3 per cent) and 20 girls (13.8 per cent) were discouraged from becoming prostitutes by the prostitutes whom they had known.

About half of the youths (52.4 per cent) said that they did not feel that there had been any single person who had been responsible for their introduction into prostitution. Among the males, a third (32.1 per cent) identified one person whom they felt was largely responsible for their becoming prostitutes. These persons included: a male friend (8.3 per cent); a pimp (1.2 per cent); the father of a friend (1.2 per cent); a girlfriend (1.2 per cent); the youth's first trick (2.4 per cent); and a brother who forced a boy to engage in oral sex while he was still a child (2.4 per cent). A further eight boys (9.5 per cent) said that they had been responsible for their own introduction to prostitution.

In contrast, about half of the girls (46.9 per cent) were able to identify a specific individual whom they felt was in large measure responsible for their becoming prostitutes. Among the persons specified were: a pimp (9.7 per cent); a male friend (7.6 per cent); the girl's father [who forced her to become a prostitute to bring in money to support the family, (0.7 per cent)]; the girl's mother (2.8 per cent); a sister (3.4 per cent); a girlfriend (9.0 per cent); a motorcycle gang (0.7 per cent); the girl's first trick (0.7 per cent); a male hustler (0.7 per cent); a girl's aunt (0.7 per cent); and a prostitute who was a friend of the girl's mother (0.7 per cent). Only one in 15 (6.9 per cent) of the girls felt that she was directly responsible for having become a prostitute. Many of the girls who stated that a "male friend" had been primarily responsible for their becoming prostitutes may have been referring to their pimps in euphemistic terms.



# Turning the First Trick

The youths were asked how old they were when they had “turned their first trick”, or had initially engaged in prostitution. Their replies, listed in Table 44.1, clearly indicate that a sizeable proportion of them, **almost half (47.6 per cent)**, had engaged in prostitution for the first time when they were 15 years-old or younger. Some of these youths had been young children when they had become prostitutes. Twelve males (14.3 per cent) and 28 females (19.3 per cent) had been age 13 or younger when they had turned their first trick.

**Table 44.1**  
**Age at which Juvenile Prostitutes Turned their First Trick**

Age when First Trick was Turned	Males		Females		Total	
	Number	Per Cent	Number	Per Cent	Number	Per Cent
8	1	1.2	—	—	1	0.4
10	1	1.2	1	0.7	2	0.9
11	—	—	2	1.4	2	0.9
12	2	2.4	5	3.4	7	3.1
13	8	9.5	20	13.8	28	12.2
14	8	9.5	12	8.3	20	8.7
15	17	20.2	32	22.1	49	21.4
16	21	25.0	38	26.2	59	25.8
17	13	15.5	8	5.5	21	9.2
18	7	8.3	12	8.3	19	8.3
19	4	4.8	5	3.4	9	3.9
20	—	—	1	0.7	1	0.4
Cannot recall	2	2.4	2	1.4	4	1.7
Not reported	—	—	7	4.8	7	3.1
TOTAL	84	100.0	145	100.0	229	100.0

*National Juvenile Prostitution Survey.*

These findings leave no doubt about the need to afford these children more effective social assistance and legal protection.

The reason given by most of the youths for turning to prostitution was that it afforded them the opportunity for rapid financial gain: 66 boys (78.6 per cent) and 95 girls (65.5 per cent) said that this was among their primary reasons for becoming prostitutes. This finding accounts for the fact that none, when they had initially left home, had had a full-time job and why only a handful had obtained some form of part-time employment. Eight males (9.5 per

cent) and 12 females (8.3 per cent) said that they began prostituting themselves out of economic necessity when they had no other source of income, while 25 boys (29.8 per cent) and 25 girls (17.2 per cent) claimed that they turned to prostitution because of their inability to find employment. One male and five females said they were forced to become prostitutes by a pimp while 25 females (17.2 per cent) said that they turned to prostitution in order to please another person who, as noted, was likely a pimp.

**Table 44.2**  
**Juvenile Prostitutes' Reasons for Turning to Prostitution**

Stated Reason for Turning to Prostitution	Males (n=84)		Females (n=145)	
	Number	Non- Accum. %	Number	Non- Accum. %
Personal trauma in youth's life	7	8.3	19	13.1
Inability to cope with parents	6	7.1	22	15.2
Pregnancy out of wedlock	1*	1.2	4	2.8
Problems with drugs	13	15.5	17	11.7
Discontent with school	10	11.9	20	13.8
Discontent with job	5	6.0	1	0.7
Inability to find employment	25	29.8	25	17.2
Opportunity for rapid financial gain	66	78.6	95	65.5
Economic necessity/no other source of income	8	9.5	12	8.3
Forced by pimp	1	1.2	5	3.4
To please another person	—	—	25	17.2
To gain sexual knowledge	6	7.1	1	0.7
Other	12	14.3	12	8.3

*National Juvenile Prostitution Survey.*

\* Presumably, the youth turned to prostitution in order to provide money for a female person whom he had made pregnant.

The vast majority of these youths said that they had not been forced into prostitution; only three males (3.6 per cent) and 23 females (15.9 per cent) said that they were induced to engage in prostitution against their will. These findings clearly indicate that, by and large, these juveniles had not been threatened and coerced into prostitution; for example, among the youths inter-

viewed, there was no evidence to suggest the existence of a proverbial “white slave trade”. This finding, however, does not deny that the youths may have been subject to a wide range of subtle and less dramatic forms of inducement to engage in prostitution; their reasons for becoming prostitutes stand as firm evidence of the existence of such pressures and inducements.

Of the females who said that they were forced into prostitution, about three-fifths (60.9 per cent) said that the person who coerced them was a pimp. Two of these 23 girls (8.7 per cent) said that their sisters had forced them to become prostitutes and one girl (4.3 per cent) said she had been forced to do so by her father. Another two of these girls had been forced into prostitution by other prostitutes and one girl said that she had been subjected to pressure by a trick.

## Case Studies

As a subculture, the persons involved in different aspects of prostitution have developed a special vocabulary describing persons, types of sexual acts, places and events. A glossary of some of their commonly used words and phrases, many having substantially different meanings for most Canadians, is given in Table 44.3. The case studies are grouped into the categories of: young female prostitutes; young male prostitutes; and young transvestite prostitutes. Although the transvestites whose experience is described here are legally males, in order to retain their own perception of their identities, the female gender is used in referring to them in the case studies.

## Young Female Prostitutes

### *Case Study 1*

Still living at home with her mother who knows about her street activities, Pat is a 13 year-old girl who has completed Grade 9. She grew up in a middle-class suburb. Her parents were recently divorced; her father now works in the United States. When she was nine, she began to run away from home in order to escape her parents' arguments. On these occasions, often lasting several days, she stayed with a girlfriend. Later, she turned to the downtown streets of the city. When she ran away, her mother always reported that she was missing to the police. Her mother also sought help from neighbours, school counsellors, psychiatrists and social workers.

When she was 11, she attempted to have intercourse with a boyfriend. She found school boring and often skipped classes. Pat turned her first trick when she was 12. This happened after she had been to a downtown theatre with a friend whose father had forgotten to pick them up. As the two girls were walking along a busy street, they were picked up by a 17 year-old boy who invited them to a party in a hotel. They accepted and later took drugs for the first time.



Table 44.3

Glossary of Street Words and Phrases

<p><b>Around the World:</b> To lick and kiss a person's body and all of the orifices.</p> <p><b>B &amp; D: (Bondage and Discipline)</b> Sado-masochistic acts including being tied up, whipped, beaten or otherwise punished.</p> <p><b>Bi: (Bisexual)</b> One who, on different occasions, engages in sexual acts with members of both sexes.</p> <p><b>Blow Job:</b> Fellatio.</p> <p><b>Candy/Safe:</b> Condom, prophylactic.</p> <p><b>Come or Cum: (noun)</b> Semen, male ejaculation.</p> <p><b>Come or Cum: (verb)</b> To have an orgasm, in reference to male or female.</p> <p><b>The Dose:</b> General term for any venereal disease.</p> <p><b>Drag/Being in Drag:</b> A male wearing female clothing.</p> <p><b>Dyke:</b> A lesbian.</p> <p><b>Fingering:</b> Vaginal or anal penetration by a finger or fingers.</p> <p><b>Fist-fucking:</b> Anal penetration of one male by another, using a clenched fist.</p> <p><b>Gay/Queen/Faggot:</b> A male homosexual.</p> <p><b>The Game/The Life:</b> The lifestyle of the young prostitutes, street life generally, with all of its in-limit rules, its players, etc.</p> <p><b>Going Down On:</b> It usually refers to cunnilingus but can refer to fellatio.</p>	<p><b>Golden Showers/Watersports:</b> Urinating on a person and thereby producing sexual arousal in the recipient. It is often performed in conjunction with manual manipulation of the customer's penis.</p> <p><b>Half and Half:</b> A combination of vaginal intercourse and oral sex.</p> <p><b>Hand Job:</b> Manual manipulation of a male's penis to the point of orgasm.</p> <p><b>Hooker:</b> A female prostitute.</p> <p><b>Hustler:</b> A male prostitute.</p> <p><b>In the Closet:</b> Not openly admitting one's homosexuality; hiding it from the public; passing as a heterosexual male in one's public life, while actually being secretly homosexual.</p> <p><b>Jerking Off:</b> Male masturbation.</p> <p><b>Out of the Closet:</b> Openly admitting to being a homosexual; generally applies to males.</p> <p><b>Pimp:</b> A person, almost always male, for whom a prostitute works and who regularly receives the prostitute's earnings or some portion thereof.</p> <p><b>Playing with Oneself:</b> Female masturbation.</p> <p><b>Queer-bashers/Head-bangers/Breeders:</b> Homophobic males who physically assault homosexual males.</p> <p><b>S &amp; M: (Sado-Masochism)</b> Sexual acts involving behaviours such as beating, bondage, whipping and other violence.</p> <p><b>Score:</b> A term referring either to obtaining money or to having sex.</p>
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Table 44.3—*continued*

Glossary of Street Words and Phrases

**Screw/Fuck/Stab:**

Penetration by a penis, usually refers to vaginal penetration but occasionally is used in reference to anal penetration.

**Sixty-Nine (69):**

Mutual oral sex performed by two persons in a head-to-genital position.

**Slut/Ho/Whore:**

Derogatory terms for female prostitutes.

**Spatting/Pooping:**

Coprophilia, defecation in a person's mouth or on the face causing sexual arousal in the recipient. It is often performed in conjunction with manual manipulation of a customer's penis. It may involve the use of an enema.

**Straight Lay:**

Vaginal penetration with penis to the point of male orgasm.

**The Street:**

The environment in general in which young prostitutes work.

**Transy:**

Slang for transsexual. A biological male who believes himself to be a female (i.e., has a female gender identity) and dresses in feminine attire. Such persons may contemplate or may be in the process of undergoing sex-change procedures.

**Trick:**

The customer of a male or female prostitute.

**Working/Working the Street:**

Working as a prostitute; applies to males and females.

When Pat woke up the next morning, she was given \$20. She had no recollection of having had sex. The boy told her that she could earn a lot more money the same way. Later, she was shown the streets frequented by prostitutes, and subsequently, she began to turn tricks each time she came downtown. She used the money to have "good times".

Pat works by herself, usually on weekends and the occasional week night to earn pocket money. She shares her earnings with her boyfriend; her income is supplemented by an allowance provided by her mother.

Because she feels that other sexual acts are too intimate and take too long to perform, Pat only engages in oral sex. She is popular with tricks because they think she is younger than she actually is and because she "has no boobs". Once, a man asked her to pose nude for a "children's book". She refused. The sex-for-money exchange usually lasts less than 15 minutes and takes place in the trick's car. When she is having oral sex with a trick, she tries to get it over with as quickly as possible so that she can get paid.

Pat has appeared in court several times for truancy and having run away from home. Because of her age, she has no criminal record. She sees her street hustling as being just "part of growing up". Because "the street is dirty and you have no friends you can trust", she says she is going to try to avoid that part of the city. She believes there should be special services available to parents in order to help them understand their children better. Although she now only occasionally attends school, she plans to return on a regular basis during the next term. She wants to become a veterinarian.

### *Case Study 2*

Marie, age 15, is the seventh of eight children. As she was growing up, neither of her parents regularly worked and the family was supported by welfare. Marie says that her parents were alcoholics and that her mother had been a prostitute.

When she was 10, Marie's father forced her to suck his penis and had vaginal and anal intercourse with her. Claiming he was "making her into a woman", he forced her to engage in these acts with him until she was 13 years-old. During this period, two of her mother's customers and several older males also sexually assaulted her.

Her mother took Marie when she was 11 years-old to visit the ships docked in the harbour of a nearby port. On these visits, Marie was assigned to a cabin where as many as nine or 10 men had sex with her. As payment, she was given alcohol which she turned over to her father. Once, a sailor gave her a "Raggedy Ann" doll after having had intercourse with her.

Marie ran away from home several times. When she was 13, she was made a ward of the local child protection agency, and subsequently, she was placed in several foster homes. When she was interviewed, she was living in a youth hostel serving "end-of-the-line kids".

After leaving foster care, Marie lived with a man who gave her drugs. She went to Los Angeles with him where she learned that he worked for a network of pimps. She was forced to work the streets. When she refused or turned too few tricks, the pimp beat her up with heated wire clothes' hangers which left permanent scars on her breasts and thighs. He also locked her in a closet several times, only letting her out to urinate or have sex with one of his "friends". Once, she was forced to have intercourse with a dog. This incident was recorded as a "kiddy porn" film.

Marie escaped from her pimp when she was picked up by the Los Angeles police and was returned to Canada. Since her return, she has worked the streets on her own. Since she keeps her earnings and performs only conventional sexual acts such as "straight lays" and "blow jobs", she feels her situation has improved. She has been found delinquent by a juvenile court for repeatedly running away.

Her memories of how she was abused in Los Angeles still haunt her. She intensely resents her parents. Although she regularly visits them, she does not want to grow up to be like them. As for her hopes for the future, she says that she has "None. I'll probably be dead soon".

### *Case Study 3*

One of two sisters, Barbara completed high school before she abruptly left home to live with a pimp. Now 18, she grew up in a happy family atmosphere. Her mother is a nurse and her father a lawyer.

When she was 16, Barbara's first sexual experience was having intercourse with a boyfriend. While she was at a downtown club with some school friends, she met the pimp with whom she is now living. It was "love-at-first-sight". Within three weeks, the pimp had persuaded her to live with him so that, together, they could share the excitement of a downtown lifestyle.

Her pimp is 27 years-old and married to a woman "back home". Pimping is his only job, a fact that Barbara had not known until they had been living together for several weeks. By then, she depended upon him completely for



emotional and financial support. Because she had left home suddenly, she feels she can't return home.

After she learned that her boyfriend worked full-time as a pimp, he began to abuse her verbally and physically. He demanded that she "work the streets" to repay him for his favours. She says that now "he hits her less often and only when I deserve it". Her quota is to earn \$200 each weeknight and \$300 on both Fridays and Saturdays. Out of these earnings, her pimp pays her \$20 a day for coffee, cigarettes and condoms.

Barbara spoke of her pimp as being her husband. When she was interviewed, she was seven months' pregnant. She believes the child to be her pimp's. She plans to continue working on the street until the delivery. When her child is born, she intends to get a babysitter to permit her to return to work on the street.

Her pimp is "very dominant. Everything has to be his way". Once, he beat her so severely that she was hospitalized with a broken jaw and collarbone. Despite this beating, she intends to continue living with her pimp and raise her child.

Because the police know that she is working with a pimp, Barbara believes that they pay special attention to her in order to obtain information about him and other pimps with whom he associates. She has been convicted twice for soliciting. She disputes the police officers' testimony that she had grabbed the arms of tricks or had run into the street to shout offers to potential customers driving by in cars. Barbara has also been convicted of: loitering (six times); twice for counselling to commit gross indecency; and once for gross indecency after being caught having oral sex in a car.

Barbara says that she wants to have a "straight" job and raise her child. She hopes that someday her pimp will go "straight". She is addicted to street life, saying that "you always come back for more".

#### *Case Study 4*

Evette's father died when she was a child. She and her two older brothers were brought up by her mother who worked to support the family. Now 17, Evette was severely beaten as a child by her mother. This "disciplining" started each time she wet her bed when she was about age seven; it included being whipped and locked naked in a closet. She grew up living in absolute fear of her mother.

When she was eight, Evette ran away from home. She was subsequently placed in the custody of a child protection agency. Because she was regarded as a "problem child", she was rotated through several foster homes.

Once when she was 11 and had run away from a foster home, she was picked up by a stranger who took her to a vacant lot and raped her. She told no one about her first sexual experience; it was only years later that she confided to a friend what had happened.

Evette says that after the child protection agency had "given up on her", she took the advice of a foster sister, a prostitute, and started to work on the street. With her foster sister coaching her from the back seat of a car, she turned her first trick when she was 14.

Because she regards certain sexual acts as humiliating to perform, Evette refuses to let tricks have anal sex or to engage in "S & M" acts. When she is working, she likes to be high on cocaine; she usually has liquor in her purse. She also carries a supply of condoms and a switchblade for protection, since

she has been roughed up several times by tricks. On several occasions, she has engaged in group sex and "orgy parties".

Evette once worked briefly for a pimp. Because she was already street-wise, she says that she was not lured by his "sweet talk". After she left him, he continued to harass her. Finally, she reported him to a friendly police officer and her testimony and that of several other girls led to his conviction for living on the avails of prostitution.

Although she is friendly with a few policemen to whom she provides information about criminal activities occurring on the street, Evette generally has little respect for the police whom she says have verbally abused her. She has been charged several times. When she was interviewed, she was waiting for the date of a court hearing to be set in relation to charges for soliciting and drinking under age. Her record includes charges of: fraud, two break-and-enter offences, willful damage to public property and shoplifting.

Evette dropped out of school in Grade 7. She hopes to attend university. If she leaves the street, she feels that it will be her own decision, although this change would involve her learning to stop "taking the easy way out".

### *Case Study 5*

The oldest of four girls, Pat now age 16, grew up in a government subsidized housing unit. Her father, who was in the army, was absent from home for long stretches of times. When he returned on brief visits, he spent his earnings to buy items for himself — alcohol, stereo equipment and a pornography collection. Pat is now fond of her mother, but she wasn't when she lived at home.

She was nine when her father first told her she was "sexy". She remembers the first night he assaulted her as the worst episode in her life. That evening, her father had been drinking heavily. When Pat resisted him, he tied her to a bed and raped her. Later, during his drinking binges, he regularly had intercourse with her. On these occasions, her mother was usually absent from home playing bingo. Pat told no one about these acts because her father beat her and because he also threatened to assault her younger sisters.

Pat's father also beat up her mother. Pat believes that her mother knew she was a victim of incest, but that she was too afraid of her husband to intervene. After Pat had run away from home several times and a neighbour had reported that she had been abused, the local child protection agency intervened. Her father was charged with incest and convicted, was imprisoned for a year, and following his release, returned to live with the family. Pat is unsure, but believes that her father has also sexually assaulted her younger sisters.

When she was 12, Pat began running away from home. On these occasions, she usually hitch-hiked with truckers who gave her a lift or a drink in exchange for having intercourse. Once when she had left home, she saw a television documentary on prostitution. She immediately decided that if she ever were to have enough money when she grew up, her only choice was to become a prostitute.

Pat became a transient when she was 14. Initially, she was harassed on the street by pimps who wanted her to work for them. A 22 year-old pimp began dating her; he soon convinced her to work for him, so that they could "get ahead together in life". He offered her protection from other pimps, a promise which never materialized, although her association with him made other pimps more cautious when they tried to procure her. Since then, Pat

has worked for two other pimps. Two of them have physically and sexually abused her. She loves her present pimp who has never hit her and who says he is going to marry her.

Working 10 hours a day, six days each week, Pat usually earns about \$150 a day. She gives all of her earnings to her pimp. Calling herself "a player in his game", she helps to recruit other girls on the street to work for him. Except for the girls working for her pimp, she distrusts all other prostitutes on the street. At the request of her pimp, she has beaten up other girls whom he regards as "trouble makers". As a sideline to prostitution, she has also worked as a "scout" for deals involving drugs.

Pat usually performs only conventional sexual acts such as straight lays and hand jobs with tricks, usually in their cars. However, she has also done anal sex, around-the-world, spanking, and once sold her panties for money. Although she has worked full-time on the street for about two years, she feels that she is not a prostitute. To her, a prostitute is a "whore or a slut". She sees herself as being "a working girl trying to make a living".

This young hooker is well informed about the legal evidentiary requirements concerning prostitution. When she is working on the street, her demeanor is quiet and unobtrusive. She knows that she should not be seen to be a "nuisance". She has a friendly, informal relationship with the plain clothes police who patrol her area. Her only conviction is for theft under \$200.

Pat says that her work as a prostitute has numbed her senses and left her feeling passive towards life. When she has sex with tricks, she frequently uses drugs to suppress her feelings and to cope with her pimp's demands. Some day, she wants to get a job as a cashier in a department store, but she is doing nothing to realize this ambition. She believes that Canadians should know what the real life of the prostitute working on the street entails.

## Young Male Prostitutes

### *Case Study 6*

Both of Marc's parents worked full-time when he was a child. His parents were divorced when he was 12 and he and his brother and sister were taken care of by his mother. Following her divorce, his mother became a heavy drinker. There were constant arguments at home. Two years ago when he was 13 years-old, he began running away from home.

Marc was age five when a family acquaintance had anal intercourse with him. When his father learned what had happened, he attacked the 16 year-old assailant, and as a result, he was charged by the police. Marc was eight when a neighbour who was a prostitute told him about life on the street. She predicted that someday, he too could become a hustler.

Bored with school, frustrated by arguments at home and seeking excitement, Marc started to visit the downtown streets when he was 13. He soon acquired a group of friends who introduced him to drugs. To pay for them, he began to turn tricks regularly the following year. By the time he was 15, his present age, he had left home and school and had become completely involved in the life of the street.

In his work as a hustler, Marc prefers sexual acts requiring the minimum of intimacy, but balances this concern by also engaging in those for which he



is best paid. Since he sees himself as being a straight hustler and a con artist, he receives but does not give oral sex. He says that only "gay hustlers" give oral or anal sex to tricks. By only receiving oral sex, he feels that he is retaining his autonomy by not becoming an active participant. Since he enjoys degrading tricks, he willingly performs acts of S & M and watersports. When he has the chance, he also steals his tricks' wallets.

Most of his tricks are middle-class males, married and living "in the closet". These clients want a quick and impersonal sexual exchange in which no extra touching or kissing occurs. Marc prefers these tricks to openly gay men whom he feels try to become too emotionally involved, who ask him to dinner, or who may want him to spend the night with them.

Marc has not been charged with soliciting. He has, however, appeared in juvenile court on charges of: assault, break-and-enter, theft and carrying a weapon. When he was interviewed, he said he would soon be appearing in adult court to face two counts of having indecently assaulted a female.

In addition to the money he earns as a hustler, Marc works part-time as an ice cream vendor. He also deals in drugs from which he makes a substantial profit. He sees the life on the street as one that is "disillusioning and causes you to lose the ability to be a caring human being". He feels that there should be more social workers reaching out to help street youths. "I'd like to be the Prime Minister. Then I'd create jobs so people like me wouldn't have to be degraded like this".

#### *Case Study 7*

After his mother's remarriage when he was an infant, Clarke and his sister grew up in a stern, religious atmosphere. His mother regularly attended church and he was physically punished if he did not pay attention to the services. Now 16, Clarke recalls that his stepfather regularly beat him. Each summer, Clarke and his sister were sent to camp or visited their natural father who was living with a prostitute. Because of tense relations between their natural parents, the children were even more severely punished on these visits than when they were at home.

By the time he was 12, Clarke had run away from home several times. He was taken into custody by a child protection agency, and subsequently, was in and out of several foster homes, group homes and detention centres. Now 16, his record includes: robbery; dealing in drugs; panhandling; stealing welfare cheques; and forging cheques.

This boy learned from other youths on the street that he could make "easy money" by turning tricks. Although at first he was disgusted by doing this, he learned that he could quickly augment his income by letting tricks suck his penis or having anal sex with them. When a trick is having oral sex with him, Clarke closes his eyes; he pretends that he is with a woman. He says that he only turns enough tricks to pay for his rent and his daily needs.

Clarke is under constant police surveillance, works with a group of hustlers, and believes that he can't leave the street. He wants to be a pimp so that he can "take it easy for a while".

#### *Case Study 8*

As infants, Stephen and his older sister were adopted by a well-to-do farming family. Now 17, Stephen recalls a happy childhood. Although he feels that his parents were too protective, he believes that they deeply loved

their children. He remembers having been called a “sissy” at school, an epithet he still resents. He grew up feeling isolated and rejected by his classmates.

When he was nine, Stephen’s first sexual relationship was with an 11 year-old boy. They regularly engaged in oral sex, anal sex and mutual masturbation. Although he has never had intercourse with a girl, he says that he would “like to try it”.

In order to be free to express his sexual feelings, Stephen ran away from home when he was 15. He believes that his parents never understood him. When he told his mother that he was “gay”, the break with his family became permanent. He feels that there should be more understanding and tolerance by Canadians towards gays. After leaving home, he turned to the street; on several occasions, he has also lived briefly in youth hostels.

Stephen turned his first trick when he was 15. He had only been hustling for a few months when he was interviewed. He was then living in a youth centre which provided most of his basic needs. He uses the money he earns from prostitution to pay for drugs and having “a good time”. Since there is no curfew at the youth centre, he usually works late each night. He meets his tricks in gay bars, bath houses and on the street.

Rarely spending more than 15 minutes with straight tricks, he averages three a night. He says that most of his straight tricks are older married men who have a “reputation to protect”. Because they pay him well, he occasionally spends several days at a time with “gay tricks”. Typically, he lets them suck his penis. If he can convince “gay tricks” that he is genuinely sexually aroused, they usually become regular customers. He prides himself on his ability to hold an erection and pretending to be sexually aroused.

Stephen has easy access to drugs and alcohol, which he uses daily. Because the police frequently patrol the street where he works, he is cautious about actively soliciting customers. He was once caught having oral sex with a customer who was later charged with gross indecency. Stemming from this incident, Stephen was sent briefly to a detention centre. His record includes convictions for the theft of a car and two break-and-enter offences.

Although he is content with his life on the street, Stephen hopes that someday he may “go straight”, get married, raise a family and get a steady job. He is taking classes to upgrade his education.

#### *Case Study 9*

Following his birth to a single mother, Tom was placed in a foster home which he remembers as being loving and supportive. When he was nine, his natural mother and his new step-father regained custody for his care. They were then strangers to him. Tom says he felt that he had done “something wrong” and that he had been rejected by his foster parents whom he loved. It was at this point that “things began to go downhill”. He remembers his childhood with his new parents as involving physical abuse and bouts of alcoholism.

One night when Tom was 10, his step-father who had been drinking, masturbated him. Tom felt guilty because he had been sexually aroused; he did not tell his mother about the incident. At first, he thought that only his step-father could stimulate “the feeling” in him. Later, when he was at school, he had “the feeling” aroused at different times by a male gym teacher, a librarian and a social worker. At school, he was constantly teased and humiliated about being gay.

When he was 12, Tom ran away from home, started taking drugs and was involved in a theft. He was placed in a number of treatment facilities and detention centres. Two years later, he met an adult gay male on the street. They became lovers and lived together for two years until Tom was ejected because he looked "too old". He had met several gay hustlers when he had lived with his lover and following the separation, he too began hustling.

Now 18 and experienced as a hustler, Tom's customers have included straight and gay tricks. Most of his tricks only pay to have oral sex performed in the back seat of a car. Others want violent and intense sexual acts. Once after he had been "fist-fucked" by a trick, he was hospitalized with a torn rectum and other injuries. Tom regularly performs a variety of S & M acts with tricks. He says it is common for tricks to show him pornography, either video tapes or magazines. He has been filmed several times at parties in private homes or hotel rooms while he performed various sexual acts.

Tom has been convicted several times on charges of shoplifting, but he has only once been cautioned for loitering. He has also been a suspect in a murder case; in this connection, he was detained in jail for several months where he was regularly sexually and physically assaulted by older inmates.

Because of his experience with "queer bashers", Tom wants to become politically active in the gay rights movement. He would like to be a counsellor in order to help boys to cope and accept their homosexuality and to avoid the type of life he has led working on the street.

## Young Transvestite Prostitutes

### *Case Study 10*

The youngest of 10 children, Paula grew up in a well-to-do family with both of her parents being professionals. Now 16, she feels that when she was a boy, she received little attention from them. The children were taken care of by a nanny and attended private schools.

When she was 10, her 20 year-old brother used to take her for rides in his car in order that they could sexually fondle each other. She does not feel that she was sexually abused by him. To escape the restrictive curfews imposed by her parents, Paula ran away when she was 14. She initially got a part-time job in a downtown restaurant where she met a transvestite who worked as a prostitute. To supplement her wages, Paula decided to start hustling on a part-time basis.

Now 16, Paula alternates between being a male and a female hustler. When she works as a female, she uses fewer drugs because she wishes to be in control of herself and because she feels there is more danger for females than for males working on the streets. Posing as a female, she usually has brief encounters with tricks performing oral sexual acts in the back seat of a car. Once, she was forced to have anal intercourse with a trick who hated "queers".

When Paula works as a male hustler, her tricks often take her to dinner or to parties. On several occasions, she has lived with tricks for short periods of time. Paula says that she makes better money working as a male than as a female hustler. She will do "just about anything" for a trick, except to let herself be physically beaten. She has been paid to urinate on a trick, defecate in a trick's mouth, stick pins in a trick's nipples, have group sex, and once, she "fist-fucked" a customer.



Paula has been charged once for loitering, but the case was dismissed in court. On another occasion, she was charged for gross indecency after she had been caught having oral sex with a trick. She feels that the police are out to get her and that they constantly harass her. She visits her parents regularly to collect an allowance which they still give her. Sometimes, she has gone home dressed as a woman. Her parents, she says, feel "it is a stage she has to go through". With their help, she hopes someday to become a designer.

#### *Case Study 11*

The youngest of several boys, Theresa remembers that when she was growing up, relatives and strangers used to tell her that if she had been a girl, she would have been "cute". Her parents, both professionals, gave her everything she needed, although her relationship with them was never warm or affectionate.

One night when she was eight, her 15 year-old brother sucked her penis. She feels that what they did was just two kids experimenting with each other. Two or three years later, she began using soft drugs obtained at school. Wanting hard drugs and to explore her sexual feelings, she ran away from home several times between the ages of 13 and 15. Street life, she found, satisfied these needs.

After leaving home, Theresa felt happier when she was dressed as a woman. She joined a group of transvestites working on the street. She turned her first trick when she was 15. When she was interviewed, prostitution was the sole source of her income. She relies heavily on hard drugs. Since she is usually "coming down from drugs" taken at night, she seldom leaves her apartment during the day.

Theresa prefers to work as a female hustler. She usually takes tricks to her apartment to perform routine sexual acts. Although she does more time-consuming acts like giving a strip show and beating or kicking a trick, she performs these acts elsewhere. She has only once been assaulted when dressed as a woman. That incident involved a trick who pulled a knife on her and stole her purse.

Although she feels she is more vulnerable when she is dressed as a female than when she is dressed as a male, she says that she only works on the street as a male when she is too lazy to put on makeup. She has had few contacts with the police, and with one exception, most have been casual. She tries to stay out of their way. Once, after nodding to a driver, she got by mistake into an unmarked patrol car. She was charged with soliciting, but the case was later dismissed.

Theresa believes that the police should not have the right to investigate her street activities. Since she feels that she is providing a necessary service, she says that she should be allowed to do her work without being harassed. Now 17, Theresa rarely visits her family. She believes that although her parents do not know she is a transvestite working as a prostitute, they suspect that she is gay. In the future, she wants to have complete change of sex so she can become a transsexual and to be trained as a legal secretary.

#### *Case Study 12*

One of three children, Caron grew up in a middle class suburb on the outskirts of a large city. She says her parents have always been happily married; she recalls no major disputes during her childhood. Once in a while, after her father had drunk too much, he physically abused her, but Caron remembers these episodes as being "nothing out of the ordinary".

When she was five, a 14 year-old male neighbour sucked her penis and asked her to do the same to him. The children regularly did this until Caron accidentally told her mother what they were doing. The acts were stopped after her mother confronted the boy's parents. Caron says that at the time, she enjoyed the experience, but now she feels that she had been sexually abused.

By age seven, Caron began to dress secretly in female clothing. Several years later, her mother thought she was gay because of her effeminate manners. As a result, Caron received psychiatric counselling. Both the physicians and her parents then realized that Caron saw herself as a female trapped in a male body.

Caron dropped out of school at the end of Grade 10. She began to hang around downtown streets where she found excitement and was accepted. She went to "drag clubs" featuring female impersonators, and soon met a number of transvestites, several of whom were prostitutes. Her new friends introduced her to hard drugs, and to pay for them, she began to turn tricks when she was 16. About two years later when she was interviewed, she saw herself as a woman earning her livelihood as a prostitute.

Caron works on the street near the area frequented by female prostitutes. For protection, she usually works with another transvestite or with a female prostitute. She alerts potential customers that she is available by wearing flamboyant clothing, by walking aimlessly, and by a nod of her head. She says that she never harasses tricks. If they reject her offer, she walks away.

Most of her customers think that she is a woman. She usually only performs oral sex, "hand jobs", and the less violent types of S & M acts. After she has been paid, in order to have the fun of seeing a trick's reactions, she sometimes lets him know that she is a male. A few of her regular customers know her gender. They pay her well to urinate on them, perform hard core S & M acts, or let them take pictures of her.

Being a prostitute, Caron says, is like playing a game of "hide-and-seek". She avoids the police as much as she can. She has only once been charged with loitering, but the charge was dismissed. She has spent time in jail for having robbed a trick of an expensive watch.

Because she feels that too many youths are becoming prostitutes, Caron feels that something should be done to keep children at home. She is receiving hormones to help her develop secondary female sex characteristics and would like to have a sex change operation. In the future, she would like to be a model or dancer. If she could live her life over again, she says she would still decide to work on the street, since nowhere else has she been so completely accepted by other persons.

## Length of Time Active as Prostitutes

The findings concerning the lengths of time that the youths had been active as prostitutes correspond to those concerning how old they were when they had turned their first trick. About a third (35.4 per cent) had been active for a year or less.

Information was not reported for 11 youths concerning how long they had been prostitutes. For the remainder, the average was 2.8 years (2.5 years,

males; and 3.0 years, females). One in eight males (11.9 per cent) and one in seven females (13.8 per cent) had been actively working on the street for five or more years.

Number of Years Active as a Prostitute	Males		Females	
	Number	Per Cent	Number	Per Cent
1 year or less	26	31.0	55	37.9
2 years	19	22.6	24	16.6
3 years	16	19.0	21	14.5
4 years	11	13.1	16	11.0
5 years	4	4.8	8	5.5
6 years	1	1.2	5	3.4
7 years	2	2.4	3	2.1
8 years	2	2.4	3	2.1
9 years	1	1.2	1	0.7
Not reported	2	2.4	9	6.2
TOTAL	84	100.1*	145	100.0

\* Rounding error

## Summary

1. By age 13, fewer than half of the youths had had any knowledge of prostitution. By age 16, four in five (81.2 per cent) had known about prostitution.
2. The most commonly cited sources of learning about prostitution were the media (25.3 per cent) and friends or acquaintances (27.5 per cent).
3. Prior to working on the street, about two in three youths (65.9 per cent) had known at least one prostitute. About one in six girls (17.6 per cent) had likely been induced to become a prostitute by a pimp.
4. About half of the juvenile prostitutes (47.6 per cent) had turned their first trick when they were 15 years-old or younger.
5. The principal reason (70.3 per cent) why these youths said that they had become prostitutes was because it afforded them the opportunity for rapid financial gain.
6. Most of these youths had not been threatened or forced to become prostitutes. Only one in nine (11.4 per cent) had been forced to engage in prostitution against his or her will.
7. About a third (35.4 per cent) had been active as prostitutes for a year or less. The average length of time spent in working the street was 2.8 years.



While the early experiences of these youths were diverse, several trends clearly emerge concerning their transition from an unhappy family background to working as prostitutes on the street. While most had sought to escape from their families, few had been able to provide for themselves adequately in a practical or socially acceptable way, or to shoulder the burden that they had suddenly assumed of caring for themselves. At the same time that they had found themselves in this vulnerable position, many had learned about prostitution for the first time, were coming into personal contact with prostitutes, and were entering into the milieu in which it thrives and is accepted as an ordinary fact of life.

These contacts made prostitution appear to represent not only a viable, but an exciting and desirable means of earning a livelihood, especially since the financial rewards associated with such a lifestyle were immediate, attractive and appeared to involve minimal risks. When these experiences are considered in conjunction with accompanying factors such as drugs and alcohol, the influence of pimps, an ordinary adolescent desire to explore one's sexuality and their inability to find other forms of employment, it is evident that many of these youths found it easy to drift into prostitution.

## Chapter 45

# Working on the Street

In this chapter, the ingrained pattern of exploitation, disease and violence in the daily lives of juvenile prostitutes is clearly documented. Drawing upon the findings of the National Juvenile Prostitution Survey, the work of these youths is described in relation to the amount of time spent as prostitutes, their soliciting practices, the sex acts performed and their payment for these, the risks that they face with respect to disease and to being threatened and attacked, and their encounters with the police and the courts.

The findings leave no doubt about the tragic consequences of a life of prostitution for these young persons and of the urgent need to afford them better assistance, to deter them from pursuing this career and to punish those persons who exploit them as customers and as pimps.

## Other Types of Work

After they left home, none of the juvenile prostitutes had held full-time jobs; only a few had obtained some form of part-time work. Their work status had remained essentially at this level during the interim. When they were interviewed, only one in 20 (4.8 per cent) held a full-time job and about one in 11 (8.7 per cent) was working on a part-time basis. Most of these youths either had no other type of work than prostitution or regarded prostitution as their full-time job.

Six males (7.1 per cent) and five females (3.4 per cent) claimed to be working full-time at an occupation other than prostitution, while 16 males (19.0 per cent) and four females (2.8 per cent) stated that they had part-time jobs. In contrast, 46 boys (54.8 per cent) and 91 girls (62.8 per cent) said that they were unemployed, while six boys (7.1 per cent) and 23 girls (15.9 per cent) stated that they had never sought employment other than prostitution and one male and three females indicated that they had been laid off from their regular jobs. Seven males (8.3 per cent) and 16 females (11.0 per cent) reported that they were students (it is unknown how many of the youths who stated that they were students were involved in part-time study or correspondence school programs, and also might safely be considered unemployed).

At least 53 males (63.1 per cent) and 117 females (80.7 per cent) had no form of employment other than prostitution. Of the youths who said that they had some type of employment, most of them held low-paying positions, working as waiters, cashiers, ice cream vendors, restaurant kitchen helpers, handy-men, landscapers and housekeepers.

## Working Hours

About two in five youths (males, 40.5 per cent; females, 38.6 per cent) said that they regarded working the street as a full-time job, while 17 males (20.2 per cent) and 35 females (24.1 per cent) said that they thought of prostitution as a part-time job. Fewer than one in three (males, 31.0 per cent; females, 31.0 per cent) claimed that they worked on the street on an occasional basis when they required money; one boy and two girls alleged that their only experience with prostitution was a single occurrence.

Most of these youths worked as prostitutes on a year-round basis: 59 boys (70.2 per cent) and 107 girls (73.8 per cent) stated that they worked on the streets during all seasons of the year. A dozen males (14.3 per cent) and 10 females (6.9 per cent) said that they worked during every season except winter, while five males (6.0 per cent) and 15 females (10.3 per cent) said that they worked only during one season.

About two in three youths (males, 63.1 per cent; females, 64.8 per cent) reported working as prostitutes at least four days each week; 24 boys (28.6 per cent) and 27 girls (18.6 per cent) said that they worked seven days a week as prostitutes. Forty-six males (54.8 per cent) and 79 females (54.5 per cent) stated that they worked an average of five hours or more each day, while 17 males (20.2 per cent) and 25 females (17.2 per cent) reported working eight hours each day. A few youths stated that, when working, they spent 12 or more hours on the street. Most of the youths (males, 77.4 per cent; females, 71.0 per cent) stated that they worked four weeks each month. These findings indicate that many of these youths devoted a substantial part of their time to working as prostitutes.

## Soliciting Tricks

When asked where they worked, most of the youths identified specific areas in the downtown cores of their cities (often a particular intersection was mentioned). In certain cities having ports, waterfront and dock areas were also mentioned by some young prostitutes. In some cities, areas were identified that are frequented only by male prostitutes, or only by females. This separation of sites reflects the fact that the sexual preferences of tricks who patronize female prostitutes differ from those of customers to whom male prostitutes sell their sexual services. In the cities where this occurs, the fact that only young male



prostitutes are found in certain areas makes it easier for the hustlers' predominantly male homosexual clientele to find and "shop" for youths whom they find attractive and who are prepared to offer them sexual gratification.

The respondents were asked where they contacted tricks. Numerous locations were reported, since, at different times, some of them used a variety of locales for meeting and negotiating with tricks. However, since the National Juvenile Prostitution Survey obtained information primarily from youths who were working on the streets, it is not surprising that the bulk of their business was carried on at the street level: 80 males (95.2 per cent) and 133 females (91.7 per cent) stated that they contacted their customers on the street. The second most favoured site was to contact tricks in bars: 38 males (45.2 per cent) and 67 females (46.2 per cent). Other places used by juvenile prostitutes to meet and negotiate business with tricks included: hotel lobbies, restaurants, theatres, docks, ship yards, bus stops and downtown malls. A few youths said that, on occasion, they telephoned tricks for whom they had previously worked.

The means used by the youths to let prospective customers know that their services were available are listed in Table 45.1 (since most of the youths had

**Table 45.1**  
**Methods Used by Juvenile Prostitutes**  
**to Notify Tricks that Their Services were Available**

Methods Used to Attract Tricks	Males (n=84)		Females (n=145)	
	Number	Non-Accum. %	Number	Non-Accum. %
Being on the street in an area well known for prostitution	73	86.9	110	75.9
Standing on a corner	37	44.0	60	41.4
Slowly walking around the block	39	46.4	58	40.0
Assuming a seductive pose	27	32.1	18	12.4
Eye contact	60	71.4	86	59.3
A verbal come-on	27	32.1	32	22.1
Smiling	55	65.5	83	57.2
Sitting in bar/restaurant/hotel lobby	16	19.0	29	20.0
Verbally informing trick of availability	16	19.0	24	16.6
Nods	—	—	6	4.1
Other	10	11.9	11	7.6

*National Juvenile Prostitution Survey.*

several ways of informing clients of their availability, multiple responses were recorded). The most popular methods of conveying this information were relatively unobtrusive means requiring little or no verbal contact and no initial communication of an overtly sexual nature.

Many of the youths (males, 69.0 per cent; females, 55.2 per cent) said that they dressed casually when they were working. A few said that they usually dressed up (males, 11.9 per cent; females, 15.9 per cent), while nine males (10.7 per cent) and 35 females (24.1 per cent) stated that, at different times, they dressed either formally or casually while they were soliciting. Two males wore clothes coded to indicate that they were willing to perform sado-masochistic acts. Another two males wore clothes designed to make them look as young as possible in order to enhance their marketability; three other males dressed in drag (i.e., feminine attire). The working outfits used by two girls consisted of anything that would make them stand out sharply from the crowd.

Of relevance from a legal perspective were the means that they used to negotiate their transactions with prospective tricks. The survey's questions focussed on whether their usual conduct when they were working on the street could be described as "pressing and persistent", and hence, whether they routinely behaved in a manner that would render them liable for the offence of soliciting for the purposes of prostitution.

Of the 229 youths, only eight males (9.5 per cent) and eight females (5.5 per cent) said that they typically initiated contact with tricks by approaching them; for 37 males (44.0 per cent) and 72 females (49.7 per cent), their business encounters generally began with tricks approaching them. A further 39 males (46.4 per cent) and 61 females (42.1 per cent) said that both they and the tricks approached each other. One girl said that the usual procedure of her tricks was to approach her pimp, while another stated that her tricks generally contacted her by telephone. Thirty-five males (41.7 per cent) and 43 females (29.7 per cent) stated that they usually spoke first to the trick, while 26 boys (31.0 per cent) and 49 girls (33.8 per cent) stated that their tricks generally started the conversation. Another 23 males (27.4 per cent) and 50 females (34.5 per cent) said that, on different occasions, either party to the transaction began speaking first.

These conversations typically began with an innocuous comment, such as: "Are you working"; "Do you want to go out"; "Do you want to go for a drive"; "Do you want to go for a drink"; or "Do you want some company?" Most of the youths, both male and female, claimed that they did not persistently attempt to force themselves on prospective tricks; 59 males (70.2 per cent) and 130 females (89.7 per cent) said that they have never approached a trick more than once or harassed him to accept their services. Substantially more of the juvenile male prostitutes (28.6 per cent) than the female juvenile prostitutes (9.0 per cent) said that they had ever made repeated approaches to a trick. Their reasons for not pressing tricks or persisting with them are listed in Table 45.2.

**Table 45.2**

**Juvenile Prostitutes' Reasons For Not Making Repeated or Harassing Advances to Prospective Tricks**

Reasons Given for Not Harassing Tricks	Males		Females	
	Number	Per Cent	Number	Per Cent
There are many more tricks to choose from	19	22.6	57	39.3
Trick may become verbally abusive	1	1.2	3	2.1
To approach a trick more than once constitutes soliciting	3	3.6	10	6.9
To approach a trick more than once is contrary to the street code	3	3.6	1	0.7
Youth too proud to make repeated advances	12	14.3	14	9.7
Youth not interested in making repeated advances	7	8.3	17	11.7
Not the youth's style to make repeated advances	3	3.6	5	3.4
The tricks approach the youth	1	1.2	—	—
Making repeated advances is a waste of time	5	5.9	3	2.1
Youth never had a trick say "no"	2	2.4	2	1.4
Most tricks who are regulars do not like to be bothered	—	—	1	0.7
Other reasons	3	3.6	7	4.8
Response missing	25	29.8	25	17.2
<b>TOTAL</b>	<b>84</b>	<b>100.1*</b>	<b>145</b>	<b>100.0</b>

*National Juvenile Prostitution Survey.*



The juvenile prostitutes were asked what they did if a trick refused the offer of their sexual services. Multiple replies were given. The majority said that under such circumstances their conduct would be neither pressing nor persistent. Three in four stated that they would simply walk away (males, 76.2 per cent; females, 73.1 per cent); 34 boys (40.5 per cent) and 62 girls (42.8 per cent) said that they would go on to the next trick. Thirteen boys (15.5 per cent) and eight girls (5.5 per cent) said they would laugh, nine males (10.7 per cent) and 13 females (9.0 per cent) indicated that they would try to change the trick's mind, and nine males and eight females reported that they would repeat their offer. Nine males and nine females said that in such a situation, they would lower their asking price. Only a few said that they would then become more aggressive: one boy and one girl each said that they would be insistent with the trick; one male said he would follow the trick; two said they would grab the trick by the arm; and one said he would grab some other part of the trick's body. Three males and one female said that they would verbally abuse a trick who refused their offer.

Less than half of the juvenile prostitutes (males, 44.0 per cent; females, 49.7 per cent) said that, at some time, they had approached and propositioned a "straight john", that is, a person who was not seeking the services of a prostitute. Of the youths who had propositioned a non-trick, 13 boys (35.1 per cent) and 41 girls (56.9 per cent) said that, upon realizing their mistake, they had simply backed off; another 16 males (43.2 per cent) and 22 females (30.6 per cent) had apologized. One male and two females had continued to bother the straight john, hoping that he might change his mind. Two males had told the non-trick that he had come into an area frequented by prostitutes. One male had followed a straight john; another had left the area in case the person whom he had propositioned might have decided to report him; and a third boy had been beaten by the straight john. One girl said that she simply laughed when she discovered her error, one asked the person for the time, and another girl pretended that she had been hitchhiking. One girl said that the straight john had given her five dollars and had told her to go home.

The juvenile prostitutes were asked if they had ever seen tricks approach women who were not prostitutes. Almost two-thirds (63.8 per cent) said that they had seen women propositioned in this fashion; 27 males (32.1 per cent) and 46 females (31.7 per cent) said that they had never observed an incident of this kind. Those who had seen a trick proposition a non-prostitute were asked to recount the reactions of both the women and the tricks. The reported reactions of these women who had been importuned ranged from insult and disgust, shock and upset, to fear, anger, and in a few instances, minor acts of violence. The youths most often reported seeing the tricks react with embarrassment and apologies; in other instances, the tricks were in cars and drove off quickly. In a few cases, the tricks verbally abused the women, persisted in their solicitations, or even followed and grabbed at the women who were not hookers.

**The Committee's findings from the National Juvenile Prostitution Survey clearly indicate that most of these youths did not typically engage in conduct**

that meets the legal requirements of the offence of soliciting for the purposes of prostitution. Most of these youths were able to advertise their availability without having to resort to obtrusive or importuning advances. They communicated the fact that they were working on the street by their dress and by means of gestures, mannerisms or poses. Often, it was unnecessary for them to approach clients, since the tricks frequently sought them out and propositioned them.

As a rule, the juvenile prostitutes did not attempt to persuade unwilling or undecided passers-by to make use of their services. Instead, their aim was to make themselves available to persons who were already “in the market” for a paid sexual encounter. Similarly, the youths’ initial conversations with prospective tricks were usually innocuous, and not pressing, insistent or overtly and offensively sexual. When they mistakenly approached a person who was not interested in paying money for sex, or one who rejected the offer of their services, most were content to back off, rather than persisting in an effort to “sell” the non-trick. As noted later in this chapter, only a few of these juvenile prostitutes had ever been charged with soliciting. In this regard, the survey’s findings clearly indicate that the existing offence of soliciting (section 195.1 of the *Code*) is of negligible utility in controlling juvenile street prostitution.

### Where Tricks Were Turned

When a trick approached them in a vehicle, more of the boys (57.1 per cent) than the girls (41.4 per cent) said that it was their usual practice to get into the car before negotiating with him. This technique has the advantage of making it more difficult for the trick to reject the youth’s terms. Fourteen males (16.7 per cent) and 52 females (35.9 per cent) stated that they entered the trick’s car after negotiating with him, and 15 boys (17.9 per cent) and 22 girls (15.2 per cent) indicated that they usually got into the vehicle during the negotiations. Another six males and two females stated that the moment at which they entered the car depended upon their assessment of the trick.

The places most often identified by the youths where they generally performed sex acts with their tricks were the tricks’ vehicles, hotel or motel rooms, and apartments.

Principal Locations Where Sexual Acts were Performed	Males (n=84)	Females (n=145)
	Non-Accum. %	Non-Accum. %
Trick’s car	65.5	73.8
Hotel, motel rooms	57.1	69.0
Prostitute’s own room, apartment	17.9	14.5
Someone else’s room, apartment	72.6	11.0



The 'other' places mentioned included: rented rooms, public parks, a schoolyard, a cemetery, steam baths and the trick's place of employment. The youths were asked what parking location was usually selected when they turned a trick in a car. Multiple replies were given. About a third (males, 32.1 per cent; females, 32.4 per cent) stated that their tricks usually parked in an underground parking lot or a garage; 29 males (34.5 per cent) and 42 females (29.0 per cent) stated that a public parking lot was used. Twenty-three boys (27.4 per cent) and 36 girls (24.8 per cent) said that the place chosen was generally a street (usually on the dark side). Ten males (11.9 per cent) and 24 females (16.6 per cent) stated that the usual parking location was on the waterfront, while 12 boys (14.3 per cent) and 24 girls (16.6 per cent) said that a beach area was used. Other parking places mentioned by the youths included: lane-ways; cemeteries; the back of a school yard or factory; public parks; construction sights; a company parking lot; and a "high class" residential area.

**The numerous locations where the young hustlers and their tricks performed sexual acts clearly indicates that a mere tinkering with legal provisions intended only to control the occurrence of these activities in public places would do little to resolve the basic dimensions of the problem of juvenile prostitution. Juvenile prostitutes are already accustomed to using a wide assortment of locations other than vehicles. The effects of legislative amendments focussing primarily upon the control of the public manifestations of these activities might serve the narrow purpose of "clearing the streets", but their enactment would likely achieve little more than having the effect of displacing or diverting most or all of these activities to being performed in out-of-sight private locations. In the instance of juvenile prostitutes, such a shift in locale would not likely dissuade them from continuing in this line of work, would make their detection by enforcement authorities more difficult, and would increase the opportunities for their control and exploitation by pimps.**

These findings and others obtained in the National Juvenile Prostitution Survey leave no doubt in the Committee's judgment that the resolution of the problem of juvenile prostitution can only be achieved effectively by means of co-ordinated and rational social and legal policies that fully account for its multi-faceted aspects. Partial measures, acted upon separately, could well have the effect of inadvertently entrenching the problem and of heightening the risks of violence and exploitation already experienced by these youths. The Committee's recommendations concerning juvenile prostitution given in Chapter 3 of the Report seek to establish a framework upon which such co-ordinated social and penal policies could be developed and implemented by government and non-government agencies.

## Sexual Acts Performed

The youths were asked how they knew what sex acts their tricks wanted them to perform. Half of the males (50.0 per cent) and almost two-thirds of the females (64.8 per cent) stated that the trick simply told them. Another 20



males (23.8 per cent) and 26 females (17.9 per cent) stated that they asked the trick, while two males and six females said that either the trick told them or they asked him what he wanted. Fourteen males (16.7 per cent) and 13 females (9.0 per cent) said that they recited a list of acts that they were willing to perform and then the trick selected the sexual act that he wanted. Four boys and one girl indicated that the usual procedure was for the trick to ask what acts they did best. In addition, one male and one female each stated that no one act was specified beforehand, but that they simply agreed to have sex with the trick. Another female said that her pimp arranged the details with the trick beforehand and then notified her.

In establishing the price for the various sexual acts which they were prepared to perform, it appears that, while the majority of the youths claimed to have established a fee schedule for the various acts that they performed, like some other workers operating on this form of remuneration, many did not stick inflexibly to these predetermined prices. Rather, many were willing to vary or negotiate their prices depending on a number of factors, including the trick himself and the nature of the supply and demand for their sexual services relative to local market conditions.

**Table 45.3**  
**Setting the Price Charged by**  
**Juvenile Prostitutes for Sexual Acts**

Factor Affecting the Price Charged	Males (n=84)		Females (n=145)	
	Number	Non-Accum. %	Number	Non-Accum. %
Prostitute has set price for various acts	52	61.9	98	67.6
Price is open for negotiation	35	41.7	37	25.5
Price varies for each trick	26	31.0	26	17.9
Prostitute offers discount to regular clients	11	13.1	9	6.2
Price depends on the going rate in the area	31	36.9	49	33.8
Price depends on prostitute's financial needs for that day (meeting the quota set by a pimp, drugs, food, bills)	15	17.9	16	11.0
Prostitute doesn't charge a fee, but is supported in return for performing sexual acts	—	—	3	2.1

*National Juvenile Prostitution Survey.*

The most frequently requested sexual act was a "blowjob" (i.e., the trick being fellated by the youth); 54 males (64.3 per cent) and 74 females (51.0 per cent) said that more tricks asked them for this than for any other sexual act. Ten males (11.9 per cent) said that they were most often asked to receive fellatio from their tricks, while seven boys said that their customers most frequently wanted them to give and receive a "blowjob". Four males stated that anal sex was most often requested. One male said that his tricks most often wanted a "hand job", while another boy specified "69" as the most popularly requested sexual act. Four males and 31 females (21.4 per cent) said that a "straight lay" was the act which was most frequently asked for by their customers. Four girls said that the most popular request was for a "straight lay" and a "blowjob", while another six girls said that they were most often asked to give "half-and-half". Two boys and two girls stated that they most frequently were requested to perform acts of "S & M" or "B & D" on their tricks. Another girl stated that she was most often asked to give a "straight lay" and also to be the recipient of anal sex, while two others said that "around the world" was most frequently requested. One boy and 22 girls (15.7 per cent) stated that no one act was asked for more than others.

Few of these youths had emotionally intimate or caring exchanges with their tricks. Of the 179 youths (59 males and 120 females) who reported the typical duration of these encounters, 33 males (55.9 per cent) and 104 females (86.7 per cent) stated that each trick received 30 minutes or less of their time. Over one in six males (15.3 per cent) and almost two in five females (37.5 per cent) said that they usually spent 15 minutes or less with each trick. Only 20 of the 59 boys (33.9 per cent) and 10 of the 120 girls (8.3 per cent) said that they spent more than an hour with each trick.

As an alternate response, 10 males (11.9 per cent) and 14 females (9.7 per cent) said that the length of time taken depended upon the nature of the act that the trick wished them to perform, while 15 boys (17.9 per cent) and nine girls (6.2 per cent) stated that the duration of the sexual encounter varied with each trick. Two males and two females said that how much they were paid determined the amount of time that they spent with a trick. Another three females said that they spent as little time as possible with each trick.

When the juvenile prostitutes were asked what they thought about when they had sex with a trick, about a third (males, 32.1 per cent; females, 38.6 per cent) said that their primary interest was in "getting it over with as soon as possible". Another 18 boys (21.4 per cent) and 38 girls (26.2 per cent) said that they thought about anything else except what they were doing, while 19 males (22.6 per cent) but only 10 females (6.9 per cent) said that they liked to think that they were having sex with another partner. Fourteen males (16.7 per cent) and 21 females (14.5 per cent) said that they only thought about the money that they were earning, and four boys and 17 girls (11.7 per cent) stated that they repressed thoughts about "how disgusting the whole scene is" or felt afraid, guilty or hated their tricks for what they were doing to them.



In light of the survey's findings, it is evident that the sexual acts which the juvenile prostitutes performed with their tricks afforded them neither much physical nor emotional gratification. The encounters were generally of brief duration and consisted of little more than the performance of the sexual act itself and the payment for the services rendered. The youths' responses suggest that, to the extent that it was feasible, most of them detached themselves emotionally from the acts in which they engaged and that they sought, particularly in the case of the girls, to avoid any personal involvement with their customers. Most of these youths deliberately attempted to separate their feelings and thoughts from their bodies: while the trick was being "turned", their thoughts were disengaged and they merely sought to "go through the motions" with their bodies. The majority of the boys and girls who participated in the survey found their work as prostitutes so unpleasant that they sought to detach themselves from it as a means of escape. The stereotyped images of the glamorous prostitute who thoroughly enjoys this line of work are not supported by these findings.

Over four in five young prostitutes indicated that there were certain sexual acts that they were unwilling to perform: 71 males (84.5 per cent) and 126 females (86.9 per cent) identified at least one act in which they would not engage, while 60 males (71.4 per cent) and 111 females (76.6 per cent) named a second such act. Among the youths who listed at least one act, 36 males (42.9 per cent) and 95 females (65.5 per cent) said that they would not receive anal intercourse. Three boys and five girls would not give a trick a "straight lay", while another 20 males (23.8 per cent) and eight females were unwilling to have acts of "S & M" or "B & D" performed on them. A further four boys and 11 girls said that they would not perform oral sex on a trick. Of the boys, two were not prepared to "fist-fuck" their tricks, one would not engage in "half-and-half" and one was unwilling to lick or suck a trick's anal area. Two males and four females said that they would not show a trick affection or kiss him and one male and one female would not be the recipient of any act performed by a trick (i.e., would not take a passive role). One boy and two girls said that they would neither perform, nor be the recipient of, an act of "spatting".

Of the youths who named a second act that they were unwilling to perform, 26 males (31.0 per cent) and 54 females (37.2 per cent) stated that they would also not urinate on a trick or allow a trick to urinate on them (i.e., to perform or receive "watersports"). Two males and one female said they were unwilling to receive oral sex from a trick, while 11 boys (13.1 per cent) and 35 girls (24.1 per cent) would not perform "around the world" on a trick. Five males and six females would not permit a trick to "fist-fuck" them. A further eight boys and seven girls said that they would be unwilling to have acts of "S & M" or "B & D" performed on them, while one male would not perform any such act on a trick. Six males and two females stated that they would not allow anal intercourse to be performed upon them; another girl specified "half-and-half" as the second sexual act that she was unwilling to perform. One male and four females indicated their unwillingness to involve themselves in any form of bestiality.



The reasons most frequently cited by the youths for their unwillingness to perform certain sexual acts were that: the acts were unappealing or disgusting; the acts were painful; the youths were not interested in performing acts that they regarded as being "kinky"; they considered the acts to be too intimate and were unwilling to perform them with anyone except their lovers; and the acts were degrading and made them feel inferior.

Their refusal to engage in certain types of sexual acts reflects their capacity to rationalize about their activities as prostitutes. Many of these youths had developed a personal code which clearly delineated between those activities which they were and were not prepared to do. As long as they adhered to this personal code, they felt they were able to persuade themselves either that they had not sunk to the lowest possible level of self-degradation or that they had not become "sluts" or "whores". By adhering to such a code, a youth was able to persuade himself or herself that someone who performed "kinky", "disgusting" or "degrading" acts was contemptible, while a prostitute who only engaged in the more conventional sexual acts for money could retain some vestiges of self-respect. Similarly, several youths had rationalized that, if they were to perform "intimate" acts with their tricks, or became personally involved in such acts, then they would be truly selling themselves, and hence, would be "sluts" and "whores".

These youths sought to convince themselves that, by performing only those acts with their tricks that permitted them to remain emotionally detached, they managed to retain a wholesome part of themselves that was unsullied by their work. This "unaffected" part of their lives was reserved for the truly intimate relations that they had with their lovers (in the case of females, these "lovers" were often their pimps). By thinking of their pimps as boyfriends or lovers, many female juvenile prostitutes sought to rationalize that they were different from girls who worked for pimps. Likewise, many young prostitutes had developed their personal codes as a means of self-protection in order to persuade themselves that they were different, and in some way less debased, than juvenile hustlers who would "do anything for money".

## Payment for Services Rendered

The youths were asked the prices that they usually charged for each of the following sexual acts: "straight lay", "blowjob", "half-and-half", "around the world", anal sex and miscellaneous sexual acts (these included receiving oral sex from a trick, giving the trick a "handjob", providing the trick with company, conversation and cuddling for the evening, performing anal sex on the trick, engaging in a threesome, stripping while the trick masturbated and performing acts of "S & M" and "B & D" on the trick). The prices quoted ranged from as little as \$20 for what they regarded as conventional acts, such as "straight lays" and "blowjobs", to as much as \$300 for more exotic acts. Typically, however, the youths reported charging between \$40 and \$100 for engag-

ing in most of the sexual acts listed. Other acts that some stated that they had performed included:

- Youth fistfucked the trick;
- Youth performed watersports on the trick;
- Trick purchased underwear from the girl;
- Fetishes acted out: feet, breasts caressed and kissed;
- Youth gave the trick an enema;
- Trick took nude photographs of the youth and thereby became aroused;
- Transvestite trick put on the female prostitute's clothes while she watched;
- Trick had the prostitute shave her pubic area and put on children's clothes before engaging in a straight lay;
- Youth masturbated, while trick watched;
- Male prostitute received anal intercourse while dressed in drag;
- Youth performed spitting on the trick.

One boy said that he would fistfuck a regular customer without asking for more money after having received payment for engaging in anal intercourse. Four males and one female charged their tricks an extra fee for spending the night with them. Another boy had been paid for acting as an escort, sometimes for days at a time. Two girls sometimes performed in "stag shows" (i.e., live sex performances) and charged according to the number of persons who were in the audience. One girl had performed sexual acts in exchange for having her living expenses paid. Two boys and one girl were sometimes paid on an hourly basis for posing in the nude. Three girls were occasionally willing to perform sexual acts if they received payment in alcohol or drugs. One male was willing to allow tricks to perform watersports on him, provided that in addition to his regular fee, he received a new set of clothes.

Almost three in five males (59.5 per cent) and more than nine in 10 females (91.7 per cent) said that it was their standard procedure to be paid before they engaged in sexual acts with tricks. Twenty-two males (26.2 per cent) but only five females were customarily paid after performing the sexual act. Eight males and one female stated that the time of payment depended on whether the trick was a regular customer whom they trusted would pay them later. A further three males usually received half of their fee before and the balance after the sexual act, while one male and three females were paid by means of an ongoing support arrangement. One girl said that, in lieu of money, she received drugs and alcohol during her sexual encounter with the trick, and another two girls typically never received money because their tricks had always made arrangements directly with their pimps.

The average daily earnings from working on the street indicate that juvenile prostitution can be a lucrative career for these youths who typically have dropped out of school early and who have had little in the way of conventional work experience. Nine male prostitutes but only one female prostitute reported

that their daily gross earnings were less than \$50. Information concerning the daily gross earnings was not reported for 16 juvenile prostitutes. The average daily gross earnings of about nine in 10 juvenile prostitutes (203 youths or 88.6 per cent in the survey) were:

Juvenile male prostitutes	\$ 140.85
Juvenile female prostitutes	\$ 215.49
Average, both sexes	\$ 189.38

The earnings of boys were generally lower than those of girls. This difference is accounted for because the number of tricks that a male juvenile prostitute can turn in a day, and hence his earnings, are limited by the number of successive times that he is able to achieve an erection. Despite their potential earning capacity, most of the youths were not financially secure, but tended to live from day to day. This fact attests to their lack of conventional occupational skills, their tendency to spend impulsively, their inability to manage money, and in the case of the females, to the destructive influence of and exploitation by pimps (Chapter 46).

Table 45.4  
 Juvenile Prostitutes' Average Daily Earnings  
 from Working as Prostitutes

Daily Earnings (\$)		Males		Females	
		Number	Per Cent	Number	Per Cent
Under	50	9	10.7	1	0.7
	50	6	7.1	3	2.1
	55	1	1.2	1	0.7
	60	7	8.3	1	0.7
	70	1	1.2	1	0.7
	75	2	2.4	1	0.7
	80	3	3.6	2	1.4
	85	1	1.2	—	—
	100	15	17.8	20	13.8
	120	1	1.2	—	—
	125	2	2.4	—	—
	130	1	1.2	2	1.4
	150	10	11.9	20	13.8
	160	—	—	1	0.7
	175	—	—	2	1.4
	180	1	1.2	1	0.7
	200	11	13.1	22	15.2
	225	1	1.2	3	2.1
	250	2	2.4	12	8.3
	300	2	2.4	25	17.2
Over	300	4	4.8	15	10.3
Not Reported		4	4.8	12	8.3
TOTAL		84	100.1*	145	100.2*

National Juvenile Prostitution Survey.  
 \*Rounding error



# Alcohol and Drugs

About a third of the youths were frequent or heavy users of alcohol and/or drugs with proportionately more young males than females reporting that they were using one or both of these substances. On average, drugs were more frequently resorted to than alcohol.

Almost three in four of these youths (73.4 per cent) either abstained altogether from consuming alcohol or only made moderate use of it, while half of the males (48.9 per cent) and two-thirds of the females (64.8 per cent) said that they were abstainers or moderate users of drugs. It is recognized that these young prostitutes who lived in an environment in which drugs and alcohol were readily accepted may have had a different idea of what constituted a “moderate” use of these substances from that held by most Canadians. Even so, the findings suggest that heavy drug and alcohol use may be less prevalent among these youths than might otherwise have been anticipated. However, it is also clear that a larger proportion of these youths of both sexes frequently made use of, or were addicted to, drugs and alcohol and that their use of these substances was considerably higher than that reported for other Canadian youths.<sup>1</sup>

Use of Alcohol and Drugs	Males (n=84)		Females (n=145)	
	Alcohol	Drugs	Alcohol	Drugs
	Per Cent	Per Cent	Per Cent	Per Cent
None/abstinence	19.0	6.0	34.5	31.0
Some to moderate	51.2	42.9	40.7	33.8
Frequent	27.4	40.5	15.9	24.1
Addicted	2.4	10.7	4.1	5.5
Not reported	—	—	4.8	5.5
TOTAL	100.0	100.1*	100.0	99.9*

\*Rounding error

During the interval between when they began working on the streets and when they were interviewed, a third of the males (32.1 per cent) and a fifth of the females (22.8 per cent) had increased their consumption of alcohol, while the use of alcohol by one in seven males (14.3 per cent) and one in three females (33.1 per cent) had decreased during this period. The alcohol consumption of half of the males (53.6 per cent) and two in five of the females (39.3 per cent) had remained at a fairly stable level. The change in consumption of seven females was not ascertained.

Half of the males (51.2 per cent) and less than a third (29.6 per cent) of the females were frequent or heavy users of various types of drugs. Forty boys (47.6 per cent) and 36 girls (24.8 per cent) said that their use of drugs had

increased since they had become prostitutes, whereas 14 males (16.7 per cent) and 47 females (32.4 per cent) reported that they had reduced their use of drugs; 30 boys (35.7 per cent) and 53 girls (36.6 per cent) reported no change in their use of drugs since they had begun to work on the streets. The change in the use of drugs by nine girls was not known.

Although working on the street as a prostitute is a contributing factor in relation to the use of alcohol and drugs by young prostitutes, the survey's findings indicate that many of these youths had been drinking alcohol or using drugs before they had turned to this way of living. One in eight females (12.4 per cent) said that she had been addicted to alcohol and one in seven (14.5 per cent) had been a heavy user of drugs before turning to prostitution. Their experience contrasts with that of young male prostitutes, of whom only one in 12 (8.3 per cent) had previously been addicted to drugs and one boy said that he had been an alcoholic before turning to the street.

Although many of these youths had previously been accustomed to using alcohol and drugs before they became prostitutes, **the survey's findings clearly indicate that many of these youths had increased their use of these substances as they had become more deeply involved in "the life" on the street. The findings also underscore the nature of the potentially serious health risks incurred by these youths by their early frequent or heavy use of these addictive substances, risks that involved a larger proportion of males than females.**

## Sexually Transmitted Diseases

As noted in Chapter 33, *Live Births, Therapeutic Abortions and Sexually Transmitted Diseases*, little is known about the actual or reported prevalence of sexually transmitted diseases among Canadians, their recognition of the signs of these conditions and the types of medical attention that are sought by those who have contracted these infections. Prior to conducting the National Juvenile Prostitution Survey, the Committee consulted the Bureau of Epidemiology of the Department of National Health and Welfare and was provided with a listing of medical clinics, centres and practices which it was believed had either developed special programs for the treatment of sexually transmitted diseases or to which persons having contracted these conditions were known to have turned to for treatment.

Recognizing the sensitive and confidential aspects of obtaining such information, the Committee augmented the listing that had been obtained and contacted the directors of these types of programs across Canada seeking statistics on the proportion of patients who were children or youths, the types of conditions known to have been contracted by them and counsel concerning how more effective assistance might be afforded these young patients.

Of the several dozen requests sent by the Committee, only two directors replied but declined to provide information, even of a statistical nature, about



the operation of these special medical programs. This cloak of professional silence about the existence and operation of these programs stems from the deeply entrenched fear of disclosure and the stigma associated with having contracted these diseases or of providing medical care for these patients. The direct consequence of this pervasive silence maintained by patients and attending professionals is that there is no reliable information for Canada concerning the extent to which certain highly vulnerable groups, such as young prostitutes, may incur serious long-term risks to their health or about how better medical attention might be provided for them.

Although prostitution is a pervasive and growing enterprise in Canada, the Committee knows of no research that has been undertaken in recent years<sup>2-3</sup> that has documented the extent of these diseases among young prostitutes. Accordingly, in the National Juvenile Prostitution Survey, the Committee sought to obtain information along these lines directly from youths who were working on the street. **The survey's findings show that a majority of these youths had at one time contracted sexually transmitted diseases, many took precautionary but ineffective measures in performing their sexual activities to avert these risks and most routinely sought medical attention either for a check-up or for treatment. The findings also clearly indicate that most of these youths were unaware, indifferent or fatalistic about the serious nature of the health risks that they were incurring as a result of their work as prostitutes.**

When they were engaged in sexual activities with tricks, about one in eight boys (11.9 per cent) and nine in 10 girls (90.3 per cent) said that they usually used some form of contraception. The remainder said that they routinely took no such precautions. It is relevant in this context to recall that these findings were obtained during 1982-83 when there was a growing public awareness of the sharp increase in the reported incidence of Acquired Immune Deficiency Syndrome (A.I.D.S.). Despite this shift in the recognition of the hazards of this condition, it is evident that the juvenile male prostitutes had not as yet sought to afford themselves better protection by contraceptive means. Twelve males (14.3 per cent) and 105 females (72.4 per cent) said that they used condoms, 54 girls (37.2 per cent) stated that they took oral contraceptives, eight girls (5.5 per cent) relied upon I.U.D.'s, and one girl said that she used a diaphragm.

Fifteen males (17.9 per cent) and 99 females (68.3 per cent) said that when they fellated tricks, they required their tricks to wear condoms, while 59 males (70.2 per cent) and 29 females (20.0 per cent) indicated that they did not take this precaution. One boy said that he sometimes imposed this condition on his tricks and three males and five females said that this decision was based on the trick's personal appearance. One girl required all of her tricks, except her regular customers, to wear a condom during fellatio, while another never made her regular customers wear condoms but made some of her other clients wear them. One male stated that, depending on whether he could afford condoms on a given day, he sometimes required that they be worn by his customers. Two boys and five girls said that they never fellated tricks.



Sixteen males (19.0 per cent) and 119 females (82.1 per cent) insisted upon their tricks wearing a condom during intercourse (the males were referring to anal intercourse). Thirty-nine boys (46.4 per cent) and 20 girls (13.8 per cent) did not require their tricks to use condoms during intercourse. The youths informed the Committee that their use of condoms and other forms of contraception was sometimes inconsistent. On occasion, some prostitutes were careless, while others dispensed with the use of condoms in exchange for extra payment.

Over two in three of the youths (males, 66.7 per cent; females, 71.0 per cent) sought medical care on a regular basis. However, in light of the risks of contracting venereal disease, a substantial minority of the juvenile prostitutes, slightly less than a third (males, 32.1 per cent; females, 28.3 per cent) did not regularly seek medical attention. Of those who did so, about three in 10 (males, 28.6 per cent; females, 29.0 per cent) were usually treated at a community health clinic. Eighteen males (21.4 per cent) and 37 females (25.5 per cent) consulted family doctors, while 14 boys (16.7 per cent) and 26 girls (17.9 per cent) usually visited a hospital clinic. Three males and one female had returned to their family physicians for treatment, one boy and three girls had gone to a hospital emergency unit, one boy had attended a psychiatric unit and five girls had contacted a public health nurse.

Half of the males (52.4 per cent) and two-thirds of the females (62.1 per cent) said that they had contracted a sexually transmitted disease, a sex-related disease or another condition since they had actively started working on the street. The disease most frequently reported was gonorrhea; 27 males (32.1 per cent) and 55 females (37.9 per cent) said that they had had gonorrhea at one time or another while working on the street. Syphilis was the second most common disease, with nine males (10.7 per cent) and 20 females (13.8 per cent) indicating that they had been infected at least once. Almost one in four males (22.6 per cent) but only about one in 50 females (2.1 per cent) had had crabs. The findings in Table 45.5 list only those conditions that the youths believed or had known that they had had. The likelihood is that the actual prevalence of these conditions was higher than that reported by them.

About nine in 10 youths (males, 84.1 per cent; females, 94.4 per cent) had sought treatment for their diseases and ailments (listed in Table 45.5). Two boys and four girls said that they had not attempted to obtain medical assistance. Five boys and one girl who had suffered from one or more of these medical conditions did not indicate whether they had attempted to obtain treatment. Four males (4.8 per cent) and 27 females (18.6 per cent) stated that at some time they had been infected but had continued to work on the street. One male and 14 females who had continued to work said that they had done so because they had been unaware that they were infected. Two males felt no compunction about turning tricks while they were infected because they did not care what happened to their customers.

**Table 45.5**

**Sexually Transmitted Diseases Contracted by  
Juvenile Prostitutes While Working on the Streets**

Disease	Males (n=84)		Females (n=145)	
	Number	Non-Accum. %	Number	Non-Accum. %
Gonorrhea	27	32.1	55	37.9
Pelvic Inflammatory Disease	—	—	5	2.1
Syphilis	9	10.7	20	13.8
Herpes	1	1.2	6	4.1
Venereal Warts	3	3.6	3	0.7

*National Juvenile Prostitution Survey.* In addition, one girl admitted to having a precancerous condition of the uterine cervix four girls had diagnoses of cancer of the cervix and 10 girls reported having had hepatitis (jaundice).

While the findings concerning sexually transmitted diseases, found in the National Juvenile Prostitution Survey have not been medically confirmed, there can be little doubt that the self-reported numbers of sexually transmitted diseases are alarmingly high. Even if a small proportion of these conditions had actually occurred, then a sizeable number of these youths could be considered at risk of developing serious and long-term complications due to their infections.

On reviewing the list of reported conditions, it is clearly evident that the number of cases of syphilis in young females is greater than expected whereas the males are in the expected range. The prevalence of gonorrhea in these groups is disturbingly high. The number of cases of complications due to gonorrhea in the females, e.g., pelvic inflammatory diseases, are at the expected level of occurrence.

Although not considered medically as a sexually transmitted disease, the presence of cervical cancer in four girls and cervical dysplasia in an additional young prostitute, place these females in a precarious situation with a guarded prognosis. The multiplicity of partners may be a factor in the evolution of this condition, although the actual cause still remains obscure. While most of the group said they routinely sought medical attention, a substantial minority admitted they had not bothered to seek medical assistance.

These findings lend additional support to the Committee's recommendation in Chapter 3 regarding the need for research in these matters and for the undertaking of a strong national program of public education and health promotion.

# Street Violence

All of the prostitutes interviewed in the National Juvenile Prostitution Survey were adolescents; many had come from homes which would not have prepared them to survive well the conditions which they initially encountered when they began working on the street. In this regard, the Committee's findings show that street violence constitutes a different, yet equally as great a threat to young prostitutes as do sexually transmitted diseases.

In relation to providing protection for themselves, the Committee learned of a few instances in which an informal "buddy system" had been developed by female prostitutes in certain cities. Under this system, every time a prostitute entered a trick's car, one of her friends noted the vehicle's licence number. If the prostitute had not returned to her usual spot on the street after a reasonable length of time, the friend would report the licence number to a police officer. These informal protective practices, however, were not employed by most of the youths. When they were asked whether they worked alone or with another person, four in five males (79.8 per cent) and over two in three females (68.3 per cent) said that they usually worked by themselves. Of the few who worked with another person, only two males and seven females said that they

**Table 45.6**  
**Types of Assailants Reported by Juvenile Prostitutes**

Types of Reported Assailants	Males (n=84)		Females (n=145)	
	Number	Non-Accum. %	Number	Non-Accum. %
Trick	18	21.4	88	60.7
Pimp	4	4.8	35	24.1
Prostitutes	10	11.9	20	13.8
Drug dealer	5	6.0	3	2.1
Friend	2	2.4	5	3.4
Police (plainclothes)	9	10.7	16	11.0
Police (uniformed)	9	10.7	11	7.6
Family member	1	1.2	2	1.4
Boyfriend	1	1.2	1	0.7
Breeder/Queer-basher	11	13.1	—	—
Transient street people	1	1.2	—	—
Taxi driver	—	—	1	0.7
Stranger/passersby	2	2.4	5	3.4
Friend of family	—	—	1	0.7

*National Juvenile Prostitution Survey.*



had developed an informal buddy system as a means of self-protection. It is evident that, for the most part, juvenile prostitutes typically do not rely upon one another to assure their safety when they are working on the street.

**In relation to the risks that they encounter, about two-thirds of the youths (63.3 per cent) had at least once been physically assaulted while working on the street. Girls were at greater risk of having been assaulted than boys (females, 70.3 per cent; males, 51.2 per cent).** Three major groups of assailants were responsible for these actual or alleged assaults against juvenile prostitutes. These were: tricks; other persons involved in street life (pimps, other prostitutes, drug dealers); and police officers. Nineteen boys (44.1 per cent) and 45 girls (44.1 per cent) who had been assaulted reported that they had required medical attention.

Life on the downtown streets of a number of major Canadian cities involves much violence. The youths who survive by prostituting themselves in this environment are subject to considerable risks of contracting disease and of being physically injured. These harms constitute serious occupational hazards that are inherent in street prostitution. The young prostitutes responded to these hazards by familiarizing themselves with, and making use of, a variety of facilities providing medical services. However, these were the only helping services to which these youths turned to with any regularity. **Typically, they used only those services which they deemed were vital to their short-term professional survival, namely, those that enabled them to continue functioning on the street. Those agencies having services which might assist these youths' long-term welfare (e.g., child protection agencies, group homes, religious organizations) were mistrusted, regarded as useless or were ignored. These helping agencies were only turned to by those young prostitutes who were unsuccessful, who were seeking a temporary haven, or in a small number of cases, by those who were trying to leave the street altogether.**

## Relations with the Police

The youths' day-to-day encounters with police officers patrolling the streets constituted their closest and most regular contact with the law and with persons responsible for its administration. Accordingly, the young prostitutes were asked to describe their relations on the street both with uniformed and plainclothes police officers. Their replies suggest that proportionately more of the males than the females had a poor relationship with uniformed police officers. Of the males, two in five (42.9 per cent) characterized their relationship with uniformed police as informal and friendly, as compared to over half of the females (54.5 per cent). Relatively few of these youths said that they had actively co-operated with the police. Only four boys had given information to uniformed officers, whereas nine girls had co-operated in this way, and a far smaller proportion of the boys (2.4 per cent) than of the girls (9.0 per cent) had discussed their personal problems with the police. On the other hand, the proportion of the males who stated that police officers had physically abused them (21.4 per cent) was slightly higher than that of the females (18.6 per cent).

When asked whether they felt that the police had a right to investigate them while they were working, about two in five of the youths (42.8 per cent) said that the police had this right while 53 males (63.1 per cent) and 76 females (52.4 per cent) believed that the police should not interfere with what they were doing. Among those who felt that the police should not investigate them, one in five youths (20.5 per cent) explained that his or her professional activities involved private transactions with tricks which were none of the police's business. Seventeen males (20.2 per cent) and 23 females (15.9 per cent) said that the police had the right to investigate them only if some type of harm was involved. Another 10 males (11.9 per cent) and 10 females (6.9 per cent) said that what they did for a living was like any other job, and therefore, that they should not be hassled or harassed.

## Child Welfare Court

**Over a third of the juvenile prostitutes (37.1 per cent) had at one time appeared before a family or social welfare court (28 males and 57 females). The circumstances leading to these hearings had included:**

- The youth's parents had lost custody with the result that the youth had been placed in a foster home (one male and four females);
- The youth was found to be truant (two males and two females);
- Incest with the youth's father had been reported; the youth had been placed in a foster home (one male and five females);
- The girl's mother had found out about the youth's involvement in prostitution and did not want her to return home (one female);
- The boy had been found drinking when under-age; his parents were held to have been negligent (one male);
- The youth had been placed in foster homes after repeatedly running away (two males and two females);
- Custody hearing in connection with divorce proceeding by youth's parents (one male and two females);
- Parents had been unable to control the youth's behaviour (two males and five females);
- The girl's mother died and her father had lost custody (one female);
- The youth had been involved in adoption proceedings as a baby (one male and four females);
- Both parents had died (two females);
- The girl, at age 14, had given up a child for adoption (one female);
- The youth had been "in-and-out" of foster homes throughout his or her childhood (one male and two females);
- Custody dispute, won by the youth's mother (one male and one female);
- Custody dispute, won by the youth's father and step-mother (one male and one female);

- The boy had been placed in a foster home for one year while his mother had received treatment for alcoholism (one male);
- The girl had been apprehended by a child protection service while she had been working on the street (one female);
- The youth had been made a ward of the court (two males and one female);
- The girls had continually run away from home and were ordered to undergo psychiatric assessment (three females);
- The girls' mothers had drinking problems (two females);
- The boy had been removed from his home as a result of physical and sexual abuse by his father (one male);
- The girl had been removed from her home as a result of physical abuse by her mother and sexual abuse by her father (one female);
- The girl, at age 16, had been charged with breaking-and-entering (one female);
- The boy had been removed from his home as a result of physical abuse by his parents (one male);
- The girl's mother committed suicide when the child had been six years-old (one female).

As a result of their appearances in Family or Social Welfare Court, 11 boys (13.1 per cent) and 24 girls (16.6 per cent) had been placed in foster homes, while 11 boys (13.1 per cent) and 19 girls (13.1 per cent) had been sent to group homes, and four males (4.8 per cent) and 13 females (9.0 per cent) had been placed in treatment facilities. In addition, three males (3.6 per cent) and 10 females (6.9 per cent) had had a variety of other living arrangements made for them by the courts.

The findings of the National Juvenile Prostitution Survey indicate that many of these youths who were later found delinquent and had become involved in the criminal justice system had had their first encounters with legal proceedings as a result of hearings before family or social welfare courts. These early encounters with the law had typically been precipitated by events involving the break-up of their families. These findings are consistent with those concerning the high proportion of the families of these youths in which their parents had separated during their childhood or adolescence (Chapter 43, *Social Background*). It is evident that many of these youths had come from troubled homes in which a nurturing family environment had been so severely ruptured as to require the intervention of child protection services and the legal system. For many of these youths, these disruptive experiences were integral to their decisions to run away from home, to drop out of school early and contributed to many being later found delinquent by the courts.

## Juvenile Court

**Of the 229 juvenile prostitutes, 34 males (40.5 per cent) and 64 females (44.1 per cent) had been found delinquent before a juvenile court.** As a result



of these hearings, 20 boys (23.8 per cent) and 20 girls (13.8 per cent) had been sent to a detention centre, four males (4.8 per cent) and 22 females (15.2 per cent) had been placed in a training school, two males and three females had been placed on probation, two males and three females had been fined, and two males had been assigned to a community work project. Eight boys (9.5 per cent) and 19 girls (13.1 per cent) had been sent to foster homes, while 12 males (14.3 per cent) and 20 females (13.8 per cent) had been placed in group homes, six males (7.1 per cent) and 15 females (10.3 per cent) had been placed in treatment facilities, one male was returned to an orphanage from which he had run away, two females stated that they had been sent home to their parents, one female was placed in an extended family and one other girl had had a private boarding arrangement made for her. One girl was placed in a Catholic reformatory, while another said that she had been reprimanded. Two boys and two girls stated that nothing happened to them as a result of being found delinquent.

## Charges Laid for Soliciting

The juvenile prostitutes were asked about their knowledge of the elements of the offence of soliciting, whether they had ever been charged with this offence, and if this had occurred, what had been the disposition of these charges.

On the basis of preliminary interviews with a number of these youths prior to the development of the research protocol that was used in the survey, it was found, and later confirmed by the survey's findings, that relatively few of these youths behaved in a manner when they were working on the street that accorded with the requirements of the soliciting offence. Since it was unknown whether they conducted themselves in this way in order to avoid being charged for "pressing and persistent" behaviour or for other reasons, questions were included in the survey concerning their knowledge of the elements of this offence. Forty-seven males (56.0 per cent) and 98 females (67.6 per cent) did not know what had to be proved against them in order for them to be convicted of soliciting (that is, they did not know the elements of the offence of soliciting). Only 37 males (44.0 per cent) and 47 females (32.4 per cent) were able to state with approximate accuracy the elements of the offence of soliciting. In addition, when they were asked whether they were aware of recent Supreme Court of Canada decisions with respect to soliciting (e.g., the decision in *R. v. Hutt*<sup>4</sup>), 62 boys (73.8 per cent) and 120 girls (82.8 per cent) said that they had no knowledge of these decisions. Only about one in four males (26.2 per cent) and fewer than one in six girls (15.9 per cent) were aware of these decisions.

**These findings indicate that many of these youths were not only naive and poorly informed concerning legal matters that directly affected them, but also suggest that for the most of them their relatively circumspect conduct on the street did not result from a deliberate effort to avoid violating section 195.1 of**

the *Criminal Code*. This conclusion is reinforced by the finding that only a few of these youths had ever been charged with soliciting. Only six males (7.1 per cent) and 25 females (17.2 per cent) had been so charged. Of the 229 youths in the survey, four males (4.8 per cent) and 21 females (14.5 per cent) had been charged as adults, while two boys and four girls had been charged as juveniles. Almost three-quarters of these 31 youths (74.2 per cent) had only been charged once or twice with soliciting.

Offence of Soliciting	Juvenile Prostitutes			
	Males (n=84)		Females (n=145)	
	Number	Per Cent	Number	Per Cent
Charged with soliciting	6	7.1	25	17.2
Convicted of soliciting	4	4.8	18	12.4

Of the youths who had been charged with soliciting, only two males and seven females stated that they had never been convicted of the offence, while three males and 14 females said that they had been convicted on only one occasion. Thus, of the 229 young prostitutes interviewed in the survey, one in 10 (9.6 per cent) had ever been convicted of soliciting, and of these, only one in 46 (2.2 per cent) had been convicted more than once. Furthermore, of the 31 youths who had been charged with soliciting, four claimed that they had not been working as prostitutes at the time and two stated that they were working only occasionally when they had been charged. Of this latter group, two males and one female said that they were “hanging around”, one girl stated that she was going for a walk and another two girls said that they were meeting friends.

Although the number of juvenile prostitutes who had been charged and convicted of soliciting is small, in each case, girls had been involved proportionately two and a half times more often in these encounters with the law than had boys. Almost three-quarters (74.2 per cent) of the 31 youths who had been charged with soliciting stated that they had been arrested when they were charged. Eight females said that the charges laid against them had been withdrawn. Of those who were convicted of soliciting (some of the youths were convicted more than once), one male and nine females indicated that they had been fined. Three boys and five girls had been sent to jail. Eight females had been placed on probation. One female had received a conditional discharge, while one male and two females had been ordered to stay away from their usual work area. One girl was sent to a detention centre, another to a training school and one had been referred to a social service agency.

In light of the findings of the National Juvenile Prostitution Survey, it is evident that the offence of soliciting for the purpose of prostitution had seldom impinged upon the street activities of the juvenile prostitutes. For most of them, these provisions barely constituted an inconvenience since in conducting



their business they had found that it was unnecessary to solicit in the manner specified by the elements of this offence. Few of these youths had deliberately changed their manner of approaching their potential customers in order to circumvent the elements of the soliciting offence. Most of them, in complete ignorance of the law, had simply never found it necessary to engage in soliciting conduct that contravened the terms of section 195.1 of the *Criminal Code*. They typically adopted more discreet means of indicating their availability, signals which were well recognized by their potential customers. It is also evident that in seeking to control juvenile prostitution, enforcement authorities more often resorted to other legal measures to achieve this purpose.

## Publication of Names

Twelve youths or two in five (38.7 per cent; three males and nine females) of those who had been arrested at some time while they had been working on the street, said that their names had been reported in local newspapers. Proportionately, this had happened more often when males (50.0 per cent) than females (36.0 per cent) had been arrested. Of those whose names had been reported in newspapers, two males and seven females said they had been identified by their real names, while one male and two females said that their street names had been published. Three boys and five girls also claimed that the publication of their identities had caused them problems. Three girls said that their families were upset and one girl stated that her parents, who were living in another province, had found out from the newspaper account that she was a prostitute. One boy and one girl stated that they had been hassled by the police after their names had appeared in a newspaper. One boy said that he began receiving obscene telephone calls after his name was published, while another boy had been bothered by persons who asked him about his arrest.

In comparison with the findings reported in Chapter 22, *Publication of Victims' Names*, the fact that the names of about two in five of the juvenile prostitutes who had been arrested had been published suggests that newspapers were somewhat less careful in protecting young prostitutes from publicity than the young victims of sexual offences. This situation will be dealt with in the future by the *Young Offenders Act* since its provisions prohibit the publication of the names of youths who are involved in legal proceedings.

## Charges Laid for Other Offences

In addition to being asked whether they had been charged and convicted of soliciting, the juvenile prostitutes were also asked if they had been convicted of other offences. Their replies leave no doubt that, for many of these youths, a career in prostitution introduced them to a criminal way of life. On average, these youths of both sexes had been charged other than for soliciting with 1.3 offences. Half of them (50.2 per cent) had been charged with property



offences, one in four (24.9 per cent) with loitering, about one in five (18.3 per cent) with various sexual offences, about one in eight (11.8 per cent) with having assaulted another person, one in 12 (8.7 per cent) with offences involving the use or possession of alcohol and drugs, and about one in five (19.2 per cent) for an assortment of other offences.

Charges Other than for Soliciting Laid Against Juvenile Prostitutes	Juvenile Prostitutes			
	Males (n=84)		Females (n=145)	
	Number	Non-Accum. %	Number	Non-Accum. %
Loitering	16	19.1	41	28.3
Property offences	49	58.3	66	45.5
Sexual offences	12	14.3	30	20.7
Assaults against the person	11	13.1	16	11.0
Alcohol and drugs	9	10.7	11	7.6
Other offences	13	15.5	31	21.4

Despite their earnings as prostitutes which putatively provided most of them with a level of income that they could not have readily obtained from conventional types of employment (due to their low level of education and general lack of work experience), it is evident that a substantial proportion of these youths had attempted to augment their incomes by means of theft. Almost half of the boys (47.6 per cent) and over a third of the girls (37.9 per cent) had been charged at least once with theft under or over \$200, robbery, possession of stolen goods and shoplifting.

While many of these youths had been victims of violence themselves, the charges laid against them indicate that about one in eight (11.8 per cent) had been charged with assault against another person. In a few of these incidents, serious crimes of violence may have been committed. These crimes with which the youths had been charged included: assault causing bodily harm (six males and four females); attempted murder (one male); and accessory after the fact to murder (one male and one female).

The Committee's findings leave no doubt that one of the principal social harms associated with becoming a juvenile prostitute is that many of these youths had also become criminally experienced as a result of having committed a variety of offences which are integrally associated with their work on the street. In this regard, the charges that had been brought against them for soliciting were almost incidental in comparison to the far larger number of charges that had been laid against them for other types of offences.

While earlier in their lives and during the period when they were becoming prostitutes many of these youths had come in contact with Child Welfare

Courts and had been assigned to the protection of various helping services, it is evident that these contacts and the assistance so afforded had been ineffectual in averting them from subsequently embarking or continuing in a career of prostitution. In addition to their contacts with medical services initiated for the expedient purpose of enabling them to continue their work as prostitutes, the second grouping of public services with which most of them regularly had contact were the police and the courts. Few of these youths had sought assistance from other types of public and voluntary helping agencies. Most did not believe that they needed to help and many rejected the types of assistance being offered as inappropriate or irrelevant to their situation.

## Advice to Other Youths

In response to being asked what advice they would give to a boy or girl who was starting out on the street, the majority of the youths regarded prostitution as an occupation which other young persons should be strongly discouraged from entering. Thirty-six males (42.9 per cent) and 57 females (39.3 per cent) said they would advise a boy or girl against working on the street, while another 21 boys (25.0 per cent) and 23 girls (15.9 per cent) said that they would tell a prospective juvenile prostitute to "go home". A few (9.6 per cent) felt so strongly about this question that they said they would take steps to prevent a youth who was thinking of entering into "the life" from doing so. On the other hand, 13 males (15.5 per cent) and 31 females (21.4 per cent) said that they would help or give practical advice to such a youth. One girl stated that she would try to recruit the young person to work for her pimp. Three males and four females said that they would offer no advice and would avoid getting involved in any way.

In their own words, the following statements are examples of the advice that the youths said they would offer to a young person who was just beginning to work as a prostitute:

### Advice Given By Female Juvenile Prostitutes

- Don't do it; a criminal record blackens your reputation. You can get hurt if you're not street-wise.
- If you are going to do it, stay away from pimps and drugs.
- It's your body, and the lowest thing you can do is to sell it. At least keep the money for yourself. Don't sell [your body] to a pimp.
- The street screws you up. If you work, work for yourself.
- GO HOME! You are going to be ruining your life. You'll look in the mirror every day and see a slut.
- I'd kick her butt home. They [young girls] shouldn't be here.
- If you need the money that bad, I'll help you out. [Working the street is] not worth it.

- Once you know you can make money, you keep on doing it and rely on it.
- Go home. Pimps are terrible and drugs are the pits. Kids shouldn't be here. You'll be old before you know it.
- I'll punch you in the face if you do — (I'd force her off the street).
- Think twice — it's a hard life.
- Beat it. You won't be happy. You'll get old before your time.
- Go back to school. [On the street] you never know if you are going to die.
- Go home. You don't want to be a slut your whole life.
- It's a disgusting way to live.
- Don't do it. It will make you feel bad about yourself when you get older.
- Don't. There are other places to go and get taken care of. For someone so young, [street life is] awful.
- Go home. Look at me.
- You're going to get hurt. You can't get away from ["the life"]. (I called the cops on one young girl.)
- I'll wring your neck if I see you on the streets. (I'd tell her what I've been through, and try to find her a place to stay).
- You'll never get off the street. It's like an addictive drug.

## Advice Given by Male Juvenile Prostitutes

- I'd tell her to stay off my corner, and would point out the bad tricks.
- If the kid were young and naive, I'd try to scare him off.
- If you're a runaway and your family will take you back, go!
- There's no future.
- You are crazy. It's a terrible way to get money.
- It's emotionally disturbing.
- Get the hell off the street!
- I wouldn't advise anyone to do it!
- You'll get really messed up if you do.
- I would physically take him off the street [and would tell him that] he's too young, and it's easy to start, but hard to stop.
- I'll punch you out if you don't get off the street.

The juvenile prostitutes were asked "If you had your life to live over, would you work the streets again?" About three in four of the youths (73.8 per cent; 54 males and 115 females) gave a negative reply responding that they



would choose to follow a different course from that which they had taken. Proportionately, over twice as many males (34.5 per cent) as females (14.5 per cent) said that they would again choose a life of prostitution. Most of the youths, especially the girls, regretted having become prostitutes and felt that they had made a mistake in choosing this career.

## Perceptions of Street Life

The youths were asked to express in one sentence how they would best describe their way of life on the street. About two in three (67.7 per cent) portrayed their lives in negative terms. Only 16 boys (19.0 per cent) and 20 girls (13.8 per cent) had anything positive to say about street life. A further seven males (8.3 per cent) and 16 females (11.0 per cent) expressed mixed or equivocal feelings about “the life”.

### Female Juvenile Prostitutes

- It is hard and frustrating.
- I'm never cold and hungry, always have money. I am respected by my friends.
- Horrible and disgusting, but the money is good. You risk your life.
- It is disgusting. I wish things would change.
- It is dog eat dog — everyone stealing from everyone else.
- Freedom. It gives me a place to get away from my family.
- It's scary and risky. You never know what's next.
- It screws you up mentally. It's crummy. The life leads you nowhere.
- It's demeaning.
- A real fucked up life.
- It's very exciting, but it can control you like a drug.
- It's a hell hole.
- It's boring, depressing and full of losers.
- It hurts and it is so lonely.
- There's money, but it eats you up. You can't get away from it. It's like a big steel trap.
- It's addictive. You always come back.
- You have to be very low to abuse your own body like this.
- It is exciting and you meet lots of friends. I feel like a somebody.
- It's scary.
- It is a depressing life, but the money keeps me coming back.

- It's a difficult life. You don't know who you're getting [into a car] with, or what the guy is going to do to you.
- It is a waste of human life.
- You feel really terrible about yourself. It's really depressing.
- Life on the streets could destroy you.
- Sadness and darkness all the time.
- Very hard to do because of the violence involved.
- It's an experiment. You learn new things and how to take care of yourself.
- Lonely, cold and degrading.
- It's having a good time and having friends around.
- It's just one long, bumpy road. It's hard to find a turnoff to get away from it.
- It's all the worst society has to offer.
- It is dark, over-powering and it hurts so much.
- It is a dark hallway going nowhere.

## Male Juvenile Prostitutes

- Depression, loneliness, being fucked up, with no hope.
- I love my job.
- A day-to-day, temporary existence that is insecure. Anything can happen.
- Fun, exciting and adventurous. You meet new people and find out what life's really about.
- It's disillusioning. It makes it easy for you to lose the ability to be a caring human being. When you can't care, you're no good to anyone.
- It can be dangerous if you don't know how to take care of yourself.
- It's fascinating. You grow up faster than anywhere else and see the world from a whole new point of view.
- A vicious circle, leading to self-destruction and depression.
- Emotionally and physically wrecking.
- Fast times, lots of drugs and no early mornings.
- An open world for anyone to learn from and explore themselves.
- It's a black hole.
- On the street, when things are good, they're really good, and when things are bad, they're really bad.
- It's a painful, slow death of your emotional and personal feelings and self-pride.

There is a striking discordance between what juvenile prostitutes were doing and how they perceived these activities. While most described prostitu-

tion in negative terms, many were unwilling to acknowledge to themselves that they were prostitutes. A clear example of the process of rationalization relied upon by these youths is provided by their replies when they were asked whether they regarded themselves as prostitutes. Half of the males (50.0 per cent) and about a third of the females (34.5 per cent) were prepared to acknowledge that they were prostitutes. However, three in five youths (59.8 per cent) were unwilling to admit either to the Committee's researchers or to themselves that they were prostitutes.

The explanations offered by the youths who were unwilling to acknowledge that they were prostitutes indicates the nature of their deeply held ambivalence about their way of life on the street. Some of these youths attempted to distinguish themselves from prostitutes by stating that they were involved in some other profession. Two girls, for example, stated that they were "in public relations", another insisted that she was just a "working girl", and one insisted that she was "a lady of the night". Two boys referred to themselves as "commercial artists". Other youths had found different ways of distinguishing their activities from those of prostitutes. One male argued that he was not a prostitute because his customers approached him. Four girls stated that they were not prostitutes because they worked only for themselves (that is, they did not have pimps), while one male and two females felt that they were not prostitutes because they did not enjoy turning tricks and were revolted by their customers. One girl stated that she was not a prostitute because what she was doing did not harm anyone, while one boy said that he was "just selling a service", and therefore, was not a prostitute. Another male said that he was not a prostitute because he had an alternative to turning tricks and could always "go to something else". Five girls said that they did not consider themselves prostitutes because what they did was "like any other job" and because "other girls give it for free".

Even though many of the youths denied that they were prostitutes, their demeanour while being interviewed and their replies denote low self-esteem and a deep-seated image of themselves as "sluts" and "whores". Most of the girls had persuaded themselves that their pimps were not pimps, but rather, were their boyfriends, lovers or fiancées. Furthermore, as previously noted, many had developed personal codes which delineated between the sexual acts that they were and were not willing to perform. In this manner, they were able to rationalize that they were not like other youth on the street who were prepared to do "anything for money".

Most of the youths were also convinced that they were destined to get off the streets, and that they would be able to find conventional, well-paying jobs, even though relatively few of them had taken or even considered decisive or concrete steps to facilitate their rehabilitation. Most described street life in negative terms, stated that they would not work on the street if they had their lives to live over and indicated that they would advise a young person starting out on the street as a prostitute not to get involved in "the life". At the same time, most were still actively working as prostitutes.



These irreconcilable contradictions indicate that most of these youths held two sharply contrasting images about themselves. On the one hand, they formed an image of themselves from their troubled backgrounds, their way of life on the streets, the acts they performed with tricks, their relationships with pimps, their lack of work skills and education and their limited prospects for the future. On the other hand, many had constructed a more palatable and flattering self-image of themselves. This alternate self-image was of a person who was not a "whore", who had no personal involvement with tricks, and in the case of the girls, who had a boyfriend or lover of whom she was proud, who was good to her and who eventually would marry her. This fictitious and more ideal person whom they believed they were had excellent future prospects of attaining a normal, happy and prosperous life.

This self-deceptive image constitutes a defence which makes it possible for juvenile prostitutes to deny the depressing realities of their day-to-day existence. This pretense makes their lives more tolerable and gives them some hope in a seemingly hopeless situation. But the imagined "better self" may be one of the factors which serves to keep them on the street, since the manufactured sense of hope may effectively function as a conceptual opiate that dulls the reality and lets them resign themselves to the conditions in which they live and work. As long as there is some vague prospect of changing their lives tomorrow, the juvenile prostitutes retain an incentive to "stick it out" and to continue working on the street until they have saved enough money to break away, until they have the chance to return to school, until, in the case of girls, their boyfriends (pimps) marry them, or until they get off drugs. In practice, these anticipated events are seldom actually realized with the result that the hope of quitting the street remains a perpetually unfulfilled longing for the future. Thus, while it may seem contradictory, it appears that as long as these youths maintain the pretense that some part of them is determined to break away from "the life", there remains sufficient justification for them to continue prostituting themselves. Males are in a more advantageous position than the females; by the time a male juvenile prostitute reaches his early twenties and begins to lose the youthful appearance that makes him a marketable commodity on the street, he is forced to find some other means of supporting himself. No similar age restrictions limit the careers of female prostitutes who, although losing the freshness of their youth, may continue to work on the streets almost indefinitely for progressively less money and in progressively more shabby and dangerous locations.

## Prospects for the Future

The youths were asked, if all obstacles were removed, in what position they saw themselves five years in the future. About three in five (57.2 per cent; 52 males and 79 females) envisaged themselves as having a "straight" (conventional) job, earning a high income, being settled and having left the street. Another 13 boys (15.5 per cent) and 30 girls (20.7 per cent) said that they saw

themselves married, having children and being settled down at the end of five years. One male and five females indicated that their ambition was to become involved with professional helping services offering assistance to future generations of children and youths on the street, while three males and four females saw themselves living out fantasies, such as residing on a tropical island. Four boys and one girl anticipated having an operation involving a change of sex. Finally, eight males (9.5 per cent) and 19 females (13.1 per cent) said they felt that they had no future, no hope, and did not expect that their lifestyle would change. Overall, about four in five of the youths (78.6 per cent) had expectations of giving up prostitution and finding a more positive and conventional way of living within the space of a few years.

**Table 45.7**  
**Steps Reported Being Taken by Juvenile Prostitutes**  
**in Order to Get Off the Street**

Actions Reported Being Taken To Get Off the Street	Males		Females	
	Number	Per Cent	Number	Per Cent
Saving Money	13	15.5	18	12.4
School	19	22.6	34	23.4
Intending to get off the street	—	—	4	2.8
Counselling	3	3.6	9	6.2
Chemical treatments and psychiatric assessments for sex change	2	2.4	—	—
Engaged to be married	—	—	1	0.7
Looking for a wealthy person (a “sugar daddy”)	1	1.2	—	—
Looking for a job	7	8.3	8	5.5
Getting off drugs	2	2.4	3	2.1
Working at a straight job	2	2.4	1	0.7
Applied for entrance to a trade school	2	2.4	1	0.7
Attending Alcoholics Anonymous meetings	—	—	1	0.7
Other	3	3.6	3	2.1
None/nothing	25	29.8	38	26.2
Not reported	5	6.0	24	16.6
<b>TOTAL</b>	<b>84</b>	<b>100.2*</b>	<b>145</b>	<b>100.1*</b>

*National Juvenile Prostitution Survey.*

\*Rounding error

When asked whether they were taking definite steps to achieve their ambitions, few were able to specify tangible actions that they were taking in order to make a decisive break from prostitution. (e.g., saving money, getting off drugs, going to school on a part-time basis). None of the males and only four females said that they were actually intending to get off the street. The fact that about one in four (23.1 per cent) was obtaining some form of schooling must be interpreted cautiously since when they were asked directly if they were students, only one in 10 (10.0 per cent) said that he or she was still a full-time student. Most who said that they were studying were involved in correspondence courses and a few were attending night school. However, most who said that they were trying to improve their education were doing so in a manner that afforded them ample time to continue working as prostitutes. Twenty-five males (29.8 per cent) and 38 females (26.2 per cent) frankly acknowledged that they had taken no tangible steps to get off the street.

Only one juvenile prostitute (0.4 per cent) in the survey, a girl, said that she had sought assistance from Alcoholics Anonymous. **A number of these youths, more often young girls than boys, had stayed briefly at street havens or hostels. However, it is significant that virtually all of the youths (99.6 per cent) in the National Juvenile Prostitution Survey did not refer to these services as a source of assistance nor had they turned to other social and community agencies in order to help them to withdraw from working on the street and to embark on a new career.**

**While the Committee did not compile a national inventory of all social services which may have been established to provide out-reach programs for these youths, many agencies were contacted in the cities where the survey was conducted. There is a stark paradox between the growing public concern about the problem of juvenile prostitution and the actual number of special ameliorative programs mounted to serve the needs of these youths. In the cities where the survey was undertaken, few special programs had been established for these youths, and during the interval of the Committee's three year review, the activities of several were curtailed, and in one instance, terminated.**

The juvenile prostitutes were asked to identify the main obstacles that might prevent them from leaving the street. While some of their replies constitute convenient rationalizations serving to justify their failure to take action in order to rehabilitate themselves, several of the reasons cited show their clear awareness of the nature of the difficulties that they would likely encounter if they attempted to break away from prostitution. There can be little doubt that their lack of education will make it difficult for most of them to embark upon careers leading to well-paying, conventional jobs. The jobs that these boys and girls are likely to find may make the fast money and lack of personal restrictions associated with prostitution appear attractive by comparison. For these reasons, it is apparent that many attempting to change their lifestyle may be sorely tempted to return to prostitution. Others may conclude that the obstacles to their rehabilitation are insurmountable and may be discouraged from making any attempt to change their lives.



**Table 45.8**  
**Obstacles to Getting Off the Street**  
**Reported by Juvenile Prostitutes**

Obstacles Reported To Getting Off The Street	Males (n=84)		Females (n=145)	
	Number	Non- Accum. %	Number	Non- Accum. %
Lack of support from family	23	27.4	32	22.1
Economic need	33	39.3	51	35.2
Addiction	10	11.9	17	11.7
Low self-esteem, depression	15	17.9	35	24.1
Lack of alternatives	14	16.7	17	11.7
Social environment, friends	17	20.2	22	15.2
Influence of pimp/boyfriend	1	1.2	5	3.4
Legal system	13	15.5	23	15.9
Lack of education	28	33.3	39	26.9
Unemployment/the economy	5	6.0	1	0.7
Lack of employment experience	4	4.8	—	—
Society's treatment of homosexuals	4	4.8	—	—
Other	7	4.8	12	8.3

*National Juvenile Prostitution Survey.*

When they were asked how existing or new services might be tailored to help them, more than half (54.1 per cent) favoured the setting up of hostels, residences or drop-in centres designed specifically for prostitutes. The youths identified a number of special features that they felt such facilities should offer, including:

- Counselling services;
- No curfews;
- Legal aid services;
- No government affiliation;
- Protection from pimps;
- Medical facilities such as sexually transmitted disease and birth control clinics;
- Some structure and discipline;

- Life skill training;
- Locations possibly away from downtown cores;
- Respect for confidentiality.

Fourteen males (16.7 per cent) and 12 females (8.3 per cent) said that job creation programs could help to rehabilitate young prostitutes. Another two boys and eight girls favoured the legalization of prostitution, while five males and eight females recommended the establishment of a variety of different services, including: gay counselling centres; funding for back-to-school programs; and more community activities for youths in the suburbs. Finally, five males and eight females gave miscellaneous responses (e.g., that young prostitutes would be unwilling to avail themselves of any helping services, that good services already existed, but were inaccessible to young prostitutes).

Those youths who advocated the creation of hostels or residences were asked how they should be set up and who should run them. A quarter (24.5 per cent) said that these services should be run by former prostitutes who knew and understood street life, while one in seven (14.0 per cent) felt that these programs should be operated by multidisciplinary teams consisting of professionals and former prostitutes. One male and eight females stated that the residences or hostels should be run by persons who were understanding and non-judgmental. A variety of other suggestions included that these facilities should be run by: female police officers; gay persons who understood the problems of homosexuals; former drug addicts; counsellors hired with government funding; "persons who believe in the kids on the street", and psychologists.

## Summary

1. While working on the street, about one in 20 (4.8 per cent) of the juvenile prostitutes had a conventional full-time job and about one in 11 (8.7 per cent) had worked on a part-time basis. Most of the youths regarded prostitution as their main source of income.
2. About three in four youths (72.5 per cent) worked as prostitutes on a year-round basis and two in three (64.2 per cent) spent at least four days each week working on the street. Over seven in 10 (72.9 per cent) averaged over five hours each day working as prostitutes.
3. Because the survey focussed primarily upon youths working on the street, not unexpectedly, most of the juvenile prostitutes (93.0 per cent) contacted their customers while working on the street, with bars being the second most favoured site for these encounters.
4. The juvenile prostitutes typically relied upon unobtrusive means to indicate their availability to potential customers. These techniques included: frequenting areas known for prostitution; standing at street corners; walking slowly; and eye contacts and smiling.
5. Only one in 14 juvenile prostitutes (7.0 per cent) said that he or she usually initiated the contact with a trick. In a majority of these encounters,

the tricks either sought out the juvenile prostitute, or both the young prostitute and the trick simultaneously approached each other.

6. When tricks refused their offers, three in four juvenile prostitutes (74.2 per cent) said that under such circumstances their conduct was neither pressing nor persistent. The main reasons cited were that it was typically unnecessary to pursue tricks since there were many more customers from whom to choose.
7. About half of these youths (47.6 per cent) said that, at some time, they had propositioned a person who was not seeking the services of a prostitute. When this had occurred, most had backed off or had apologized.
8. Two-thirds of the juvenile prostitutes (63.8 per cent) said that they had seen persons who were not prostitutes propositioned by tricks. The reactions of these persons had ranged from being insulted and disgusted to fear and anger.
9. The sexual acts performed by juvenile prostitutes with tricks were performed in a wide variety of public and private locations. The principal sites were the tricks' vehicles, hotel or motel rooms, and apartments.
10. The juvenile prostitutes were requested to perform a wide range of sexual acts, the most common being "blow jobs" and a "straight lay". Four in five said that there were certain sexual acts that they were unwilling to perform.
11. Seven in 10 juvenile prostitutes (71.2 per cent) spent less than half an hour, on average, with each trick.
12. Three in five males (59.5 per cent) and nine in 10 females (91.7 per cent) reported their standard procedure was to be paid prior to engaging in sexual acts with tricks. Their average daily earnings were \$189.38 (males, \$140.25; females, \$215.49).
13. About a quarter of the juvenile prostitutes (23.6 per cent) were frequent or heavy users of alcohol; over a third (37.6 per cent) either frequently used drugs or were addicted to these substances. Proportionately, more of the young males than the young females used one or both of these substances.
14. When they performed sexual activities with tricks, one in eight male juvenile prostitutes (11.9 per cent) and nine in 10 female juvenile prostitutes (90.3 per cent) usually used some form of contraception. A fifth of the males (19.0 per cent) and four in five females (82.1 per cent) required tricks to use condoms during intercourse.
15. Over two in three juvenile prostitutes said that they routinely obtained medical care. However, a substantial minority, slightly less than a third, did not do so.
16. Since they had started working as prostitutes on the street, about a third of the youths (35.8 per cent) had contracted gonorrhea and about one in eight syphilis (12.7 per cent). The prevalence of these conditions, particularly among young female prostitutes, is alarmingly high in light of the risks of their having serious long-term complications affecting their health.



17. About two-thirds of the juvenile prostitutes (63.3 per cent) said that they had been physically assaulted at least once since they had been working on the street. Their reported assailants included: tricks; other persons involved in street life; and police officers. Over two in five of the youths said that they had needed medical attention resulting from these assaults.
18. When they were children or adolescents, over a third of the juvenile prostitutes (37.1 per cent) had been involved in legal proceedings before family or social welfare courts.
19. Over two in five of the juvenile prostitutes (42.8 per cent) had been found delinquent before a juvenile court.
20. About one in seven (13.5 per cent) of the juvenile prostitutes had been charged with soliciting for the purpose of prostitution and about one in 10 (9.6 per cent) had been convicted for this offence.
21. Two in five youths (38.7 per cent) who had been arrested at some time while they had been working on the street reported that their names had been published in local newspapers.
22. On average, these youths had been charged with 1.3 offences other than for soliciting. Half (50.2 per cent) had been charged with property offences, one in four (24.9 per cent) with loitering, about one in five (18.3 per cent) with various sexual offences, about one in eight (11.8 per cent) with having assaulted another person, one in 12 (8.7 per cent) with offences involving the use or possession of alcohol and drugs, and about one in five (19.2 per cent) for an assortment of other offences.
23. A majority of the youths said that they would strongly discourage other young persons from becoming prostitutes.
24. Three in five youths (59.8 per cent) who were working on the street were unwilling to acknowledge that they were prostitutes and stated that they were working in some other occupation.
25. About three in five youths (57.2 per cent) said that within five years they envisaged themselves having a conventional job, making good money, being settled and living off the street. Few of the youths were taking definite steps to achieve their ambitions.
26. More than half of the youths (54.1 per cent) said that they believed young prostitutes could best be helped by the setting up of hostels or drop-in centres having a range of services tailored to meet their needs.

**The ingrained pattern of exploitation, disease and violence in the daily lives of juvenile prostitutes is unmistakable from the Committee's research findings. These youths are the cast-offs of Canadian society. Many are early drop-outs from school and have run away from home at an early age. About two in five of these youths had been found delinquent before a juvenile court, and while few of them had been charged or convicted of soliciting, a substantial proportion had been charged with other offences. The findings leave no doubt that for many of these youths their work as prostitutes introduces them to a criminal way of life in which they become progressively more entangled.**

**They also face considerable risks of contracting serious diseases, of being severely physically injured and of being harshly exploited by pimps.**

While most of these youths have at one time been in contact with social services or enforcement agencies, except for seeking assistance such as medical care which they deem essential to their continuing to work as prostitutes, few seek out other helping services. The programs which might assist them are largely mistrusted, regarded as useless, or are ignored.

**The amelioration of the tragic plight of juvenile prostitutes lies, in the Committee's opinion, chiefly in the implementation of social rather than legal initiatives. We believe that young prostitutes can be helped by more effective social intervention and by the development of programs aimed at reintegrating them into the mainstream of society. However, such social initiatives are most frequently rendered useless because they are not sought out by these youths and because viable means of intervention are currently lacking.**

**There are no effective means either in federal or provincial legislation of holding these children and youths. There are no effective means of bringing these children and youths into situations where they can receive guidance. There are no effective means of stopping the demonstrated harms that these children and youths are bringing upon themselves. For these reasons, the Committee believes that the implementation of criminal sanctions against these children and youths must be made a legal possibility by creating an offence in order that social intervention can take place.**

In reaching this conclusion, and reflecting divided opinions in the field, there was strong disagreement by some Members of the Committee that a criminal sanction against juvenile prostitutes was either desirable or likely to be effective, and indeed, a concern that such a prohibition would detract from the primary emphasis upon prevention, early identification and early intervention.

In recognizing these important concerns, there is no desire on the part of the Committee to affix a criminal label to any juvenile prostitute. The Committee concluded, however, that in order to bring these children and youths into situations where they can receive guidance and assistance, it is first necessary to hold them and the only effective means of doing this is through the criminal process. Accordingly, the Committee reluctantly concludes that it is necessary to have a specific criminal sanction prohibiting children and youths engaging in prostitution. This sanction is a complementary prohibition to that recommended by the Committee against the customers of juvenile prostitutes. Together, these sanctions would constitute a clear legislative commitment that juvenile prostitution has no place in Canadian society.

**The Committee recommends that the *Criminal Code* be amended to provide that:**

- 1. Every young person who offers, provides, attempts or agrees to offer or provide for money or other consideration to engage in a sexual act with another person is guilty of a summary conviction offence.**



**2. For the purpose of this section, “young person” means a person who is under 18 years of age.**

Education is potentially the most effective tool for stemming the spread of juvenile prostitution. The Committee's findings leave no doubt about the emotional and physical harms, the risks and the privations associated with street life. The findings constitute a clear warning to any youth who is considering either running away or turning to prostitution. Elsewhere in the Report, the Committee has called for a national program of public education and health promotion as an essential means of affording better protection for sexually abused children. We also believe that there is an urgent need for this national program to focus upon the risks — physical, health, emotional and social — involved for youths who become prostitutes. It is essential that both parents or guardians and youths be fully informed about the actual conditions and risks associated with the street life of young prostitutes.

In conjunction with the national program of public education and health promotion (specified in Recommendation 2), **the Committee further recommends that special educational programs be developed drawing upon the findings of this Report documenting the conditions and risks associated with juvenile prostitution, and that these special educational programs be made available to parent-teacher associations, and to schools and by means of educational television.**

It is clear that no attempt to rehabilitate young prostitutes is likely to succeed unless it focusses attention on the need of these youths to alter their attitudes toward themselves and their way of living. Especially tailored helping programs are required having services designed to enhance the self-esteem and self-confidence of young prostitutes by imparting to them job or trade-related skills as well as conventional “life skills”. Such programs, if successful, would also make it more financially feasible for these youths to get off the street. Programs having these objectives are vital prerequisites for the kind of action that is required to assist juvenile prostitutes to start a new life, one in which they have a perception of themselves as persons capable of living and working in a manner that is personally fulfilling, socially accepted and free of unacceptable risks to their health and safety.

Despite the difficulties involved, the Committee believes that government at all levels has the unmistakable obligation to take positive steps in order to accomplish these objectives.

The Committee recommends that: The Office of the Commissioner in conjunction with other branches of the Government of Canada establish support for special multi-disciplinary demonstration programs (child protection, police, education, medical and youth job training services) for five years (renewable) designed to reach and serve the needs of these youths, focussing upon: affording immediate protection; counselling; and education and job training.



## References

### Chapter 45: Working the Street

- <sup>1</sup> Canada. Department of National Health and Welfare. *Summary of Results: Gallup Youth Omnibus Survey*. Ottawa, 1982.
- <sup>2</sup> Williams, D.H., Commercialized Prostitution and Venereal Disease Control: Results of Suppression of Commercialized Prostitution on Venereal Disease in the City of Vancouver, *Canadian Journal of Public Health*, 31: 416-22, 1940.
- <sup>3</sup> Williams, D. H. Suppression of Commercialized Prostitution in the City of Vancouver, *Journal of Social Hygiene*, 27: 364-72, 1941.
- <sup>4</sup> *Hutt v. The Queen* (1978), 38 C.C.C. (2d) 418 (S.C.C.).

## Chapter 46

# Tricks and Pimps

Prior to undertaking the National Juvenile Prostitution Survey, the Committee found no Canadian research concerning the customers of juvenile prostitutes or about pimps who exploit these youths. Since customers, or tricks, tend to be highly secretive about their use of prostitutes, the Committee concluded that it would have been futile to approach such persons on the street to elicit information from them. For the same reason and as well in order to avoid offending persons who had never purchased the services of a prostitute, the Committee did not seek to obtain this information by means of the National Population Survey.

The Committee was also concerned about the role played by pimps in the prostitution of children and youths. A pimp is defined in this Report as any person for whom a prostitute works and who regularly receives part or all of the prostitute's earnings. Beyond a number of accounts in the case law, the Committee was unaware of any study for this country that had documented who these persons were who exploited children and youths. The Committee was aware from the outset that reliable information would be extremely difficult to obtain in this area and that a direct approach seeking to contact pimps by means of the youths whom they controlled was precluded because of the risks entailed for these young prostitutes.

The National Juvenile Prostitution Survey included a detailed series of questions concerning both tricks and pimps. The information is limited to the experience of the youths who participated in the survey. The information given in this chapter about tricks is based on the knowledge and subjective impressions of these youths about their customers. Prior to undertaking the survey, the Committee was advised that most female juvenile prostitutes would be reluctant to discuss openly their relationships with their pimps. While this prediction proved to be generally valid, nevertheless, some of these youths were frank and forthcoming in describing their working arrangements with pimps. In a number of instances, interviews were held with both young prostitutes and their pimps.

Despite the limitations concerning the scope and details of the information obtained about tricks and pimps in the National Juvenile Prostitution Survey,

the findings obtained afford a sufficient basis in the Committee's judgment to identify measures that are requisite in order to deter persons who use the sexual services of children and youths who are prostitutes and who exploit these young persons socially and economically.

## Gender of Tricks

The vast majority (96.9 per cent) of the tricks regularly purchasing the services of juvenile prostitutes are males. Only one in 32 of the juvenile prostitutes (3.1 per cent; three males and four females) reported having a predominantly female clientele. However, half of the youths (50.2 per cent) said that they had been approached for their services on at least one occasion by a woman. This had occurred more frequently to male juvenile prostitutes (61.9 per cent) than to female juvenile prostitutes (43.4 per cent).

**Table 46.1**  
**Juvenile Prostitutes Who had been Approached for  
Their Services by Women**

Number of Times Approached for Services by a Woman	Males		Females	
	Number	Per Cent	Number	Per Cent
1	21	25.0	20	13.8
2	6	7.1	9	6.2
3	7	8.3	8	5.5
4	4	4.8	7	4.8
5	2	2.4	3	2.1
6 and over	5	6.0	11	7.6
Several times	7	8.3	5	3.4
Never, not reported	32	38.1	82	56.6
TOTAL	84	100.0	145	100.0

*National Juvenile Prostitution Survey.*

Of the youths who had been approached by a woman, three in four (76.5 per cent) stated that the woman in question had propositioned them for herself. There was only a slight difference in this respect between male juvenile prostitutes (37 of 52 males, 71.2 per cent) and female juvenile prostitutes (51 of 63 females, 81.0 per cent). Five males and one female said that women had approached them for someone else, while eight boys and six girls said that the woman had wanted them to engage in group sex. One boy was asked by a female customer to put on a stag show at a women's shower, and another seven boys and eight girls said the female customers had wanted them both for themselves and to engage in group sex.



# The Most Recent Trick

In order to obtain information on a uniform basis concerning the tricks of juvenile prostitutes, each youth was asked about his or her most recent trick. Eighteen boys (21.4 per cent) had approached the trick, while 63 boys (75.0 per cent) and 112 girls (77.2 per cent) said that the trick had approached them. One boy had contacted his trick by telephone. Almost two-fifths of the males (38.1 per cent), and slightly less than one-third of the females (30.3 per cent) stated that the trick had approached them on foot, whereas more than half of the boys (54.8 per cent) and about two-thirds of the girls (66.9 per cent) said that the customer had been in a vehicle. Two males and three females said that the contact between the trick and themselves had been made by telephone, and one boy said that he had gone to the trick's home, while one girl stated that her client had visited her home.

The youths were asked to estimate the approximate age of their last trick. To the extent that their estimates are accurate, then it would appear that the majority of the tricks (54.8 per cent of the boys' and 58.6 per cent of the girls' customers) were between 35 and 49. About a third of the tricks were between 20 and 34 and about one in 10 was age 50 or older.

**Table 46.2**  
**Estimated Age of the Most Recent Trick**  
**of Juvenile Prostitutes**

Estimated Age of Most Recent Trick	Males		Females	
	Number	Per Cent	Number	Per Cent
20 – 24 years	4	4.8	9	6.2
25 – 29 years	8	9.5	19	13.1
30 – 34 years	15	17.9	16	11.0
35 – 39 years	23	27.4	36	24.8
40 – 44 years	13	15.5	28	19.3
45 – 49 years	10	11.9	21	14.5
50 – 54 years	9	10.7	14	9.7
Not Reported	2	2.4	2	1.4
TOTAL	84	100.1*	145	100.0

*National Juvenile Prostitution Survey.*

\*Rounding error

More than three-fifths of the youths knew their last trick's marital status, two in five his occupation and almost half whether he had any children. These findings indicate that many tricks tend to discuss their personal lives with the prostitutes whose services they use, and as such, support the youths' claims that many of their clients are lonely or socially inadequate individuals who are seeking companionship.

Of the youths who knew the marital status of their last trick, 19 males (36.5 per cent) and 61 females (67.8 per cent) said that the trick was married. Presumably, most of the married clients of the male juvenile prostitutes were "in the closet", that is, they kept secret their sexual preference. Twenty-three males (44.2 per cent) and 18 females (20.0 per cent) who knew the trick's marital status stated that the trick was single; two males and six females said that the trick was separated, while six boys and three girls stated that the trick was divorced, and two girls stated that the customer was widowed. Among the youths who knew their last trick's marital status, it appears that the majority of the females' tricks were married, while almost as large a proportion of the males' customers were married as were single.

The majority of the youths who knew the occupation of their previous trick either stated that the trick held a service-type job or that he was a professional, a white collar worker or held a management position. A quarter of the males (25.0 per cent) and about half of the females (47.5 per cent) who knew the trick's occupation said that he held a service job, while half of the males (52.5 per cent) and a third of the females (32.8 per cent) stated that the trick was in management, a professional or a white collar worker. The findings suggest that the individuals who had most recently used the sexual services of juvenile prostitutes differed in terms of their social background in relation to whether they had sought the services of boys or girls. Proportionately more of the girls' tricks were blue collar or service workers while a higher proportion of the males' tricks were professionals, white collar workers or in management positions. Overall, **the findings indicate that the services of juvenile prostitutes had been sought out by persons from all walks of life.**

Two-thirds of the juvenile prostitutes (males, 65.5 per cent; females, 69.7 per cent) said that their most recent trick had been in a friendly or talkative mood. Another 10 males (11.9 per cent) and 22 females (15.2 per cent) said the trick had been shy or secretive. Six males and two females reported that the trick appeared to be mentally ill. Two boys and one girl said that their encounters with the trick had been a purely businesslike transaction. Two males and six females said their last trick had been verbally abusive, while one girl had been physically abused and robbed. One girl said that two tricks who could not speak English had had sex with her and another prostitute in a car. Another girl said that she was upset and crying, but that her trick had consoled her and made her feel better. One boy said that his most recent trick had spoken about other prostitutes, while another reported that the trick was scared since it was probably the first time that he had been with a prostitute. Another boy stated that he and his trick had liked each other and that the trick would probably become a regular customer. One boy said that his trick was "horny" and had talked only about sex, while still another stated that his customer was straightforward and blunt about what he had wanted.

Three in five of the youths (59.4 per cent) said that their last trick had not been using drugs or alcohol during their transaction. However, proportionately more of the tricks of young males than those of young females were reported to

have been using one or both of these substances. Nineteen males (22.6 per cent) and 30 females (20.7 per cent) said the trick had been drinking, while nine boys (10.7 per cent) and four girls (2.8 per cent) stated that their trick was drunk. A further seven boys (8.3 per cent) and three girls (2.1 per cent) said that their trick had been using drugs, and five girls (3.4 per cent) said that the trick had been “stoned” (i.e., heavily under the influence of drugs). Three males (3.6 per cent) and seven females (4.8 per cent) indicated that the trick had been using both alcohol and drugs.

## Descriptions of Tricks

The juvenile prostitutes were asked to describe in their own words the tricks who typically sought their services.

### Tricks of Male Juvenile Prostitutes

- Early 40s, businessmen.
- Wimpy men in the closet. Putting on a heterosexual front, married, with money, looking for an emotional relationship.
- Men over 30, generally married and in the closet. They have to pay for sex because they are unattractive.
- Men neglected by their wives or men who are in the closet and don't feel comfortable going into gay bars.
- Middle-aged, in the closet, married, lonely, and looking for sex with no relationships.
- Emotionally insecure, lonely, older, married, pressured to keep up their straight image on the job. In the closet gays.
- Fat old men.
- Older (middle-aged) men who have money, but have too little confidence to meet partners in bars. Lonely homosexuals in the closet.
- Men looking for little boys' penises to suck on.
- Middle-aged, married men making good money. Very insecure, in the closet. They feel more secure about getting sex by paying for it.
- Balding, fat, 50, with money. Usually in a car. Married with kids. In the closet.
- Rich faggots.
- Nice guys with weird sexual hang-ups.
- A gay who has not come out of the closet and wants a boy's penis.
- Men who pay money for sex, who get off on paying for it, or are in the closet and can't come out to the [gay] clubs to pick up men. Married, professional men.
- Desperate older men with no looks, but lots of money.



- Middle-aged, well-off, lonely. They are socially unattractive or think they are.
- Ugly, old, overweight. The kind of people you wouldn't want to have sex with. They pose as intellectuals and act as if they had an advantage over the hustlers.

## Tricks of Female Juvenile Prostitutes

- Men who don't get enough sex at home from their wives. Older men, with money, wives and kids. The younger tricks try to rip me off and are more violent.
- Men who can't get blowjobs at home and want little girls to do it.
- Lonely men who cannot have successful sex lives without paying for it.
- Businessmen, 40 and older, usually in cars.
- Usually nice. Older, married. Their wives don't give them enough sex.
- They're nothing to me—I use them for what I want. They're looking for a bit of companionship, love. They want to be told they're special. Some rip you off. They're very horny.
- They want something different from home and want to know what a hooker is like. They're lonely, married and have kids and money.
- They're sexually desperate.
- Short, fat, balding and ugly. They're losers. They're older, married men. Some have brought their sons along.
- Older, married men with money, some lonely. They can't find a girl any other way.
- They're married and have kids and talk about them. They sometimes tell me, "you remind me of my daughter".
- Married, middle-class men. They don't like to go to hookers, but have to because their wives have hang-ups.
- Short, chubby middle-aged men who are lonely. They talk over their troubles with me.
- There are two kinds of tricks: the family man with a wife, kids, a business and money; and the dirty old man who is kinky and wants young girls.
- Overweight, middle-aged, gray-haired, smelly, paranoid.
- Middle-aged men in business suits who are lonely and need love.
- Scum, hard-up, mentally disturbed, liars. Old and fat, with money.
- Perverts who like to abuse women.
- Men who want blowjobs and cannot get them at home.
- Men looking for something they can't get at home, living out fantasies. They're insecure and believe that paying for sex makes them a man. They like to have a powertrip with women.
- Middle-aged men with problems at home who want to get laid and talk to you about their problems.

- Men who want to control women and tell them what to do.
- Jerks. Perverts who like to sleep with little girls.
- Nice, understanding people who have sexual problems in their marriages. They're middle-aged and have money.

Several trends emerge from these descriptions about the types of persons who patronize young prostitutes. A sizeable proportion of the customers of the boys and girls were middle-aged, married men who came from middle-class backgrounds. Many of these tricks had sexually unfulfilling home lives or went to prostitutes in order to engage in a wider variety of sex acts. The males typically characterized their tricks as gay men who were “in the closet” (i.e., publicly posing as heterosexuals) and who used young hustlers as a means to obtain sexual satisfaction without risking exposure of their homosexual tendencies. The male juvenile prostitutes described many of their tricks as lonely, insecure or socially inadequate men for whom a transaction with a prostitute represented one way of having a sexual encounter without fear of rejection.

Several girls said that their tricks used prostitutes as an outlet for their feelings of hostility and aggression towards women. Some suggested that their customers wanted to dominate women or to have sexual encounters in which their partner was completely submissive and prepared to submit to their whims. About one in eight of the tricks was reported to have a special sexual interest in children. The juvenile prostitutes' descriptions of their tricks indicate that most of them regard their clients either with hostility or as being pathetic, contemptible or disgusting individuals. The tricks were often portrayed as being physically unattractive persons with whom the young prostitutes found it distasteful and unpleasant to engage in sexual acts.

## Criminal and Social Sanctions Against Customers

In the Committee's judgment, a separate criminal offence is needed to deter persons who seek out and use young prostitutes. Section 195.1 of the *Criminal Code* requires that an accused be “pressing or persistent” in his or her solicitations and that the solicitation occur in a “public place”. While these requirements are relevant to the public nuisance aspect of prostitution, they are clearly irrelevant to society's more compelling interest in deterring and punishing the exploitation of young persons by way of prostitution. Furthermore, the substantial harms incurred by young persons who engage in prostitution are independent of whether a prospective customer actively solicits their services in a public or a private place. The Committee does not consider that adults who exploit the sexual vulnerability of young persons should be considered any less culpable because they agree to pay for the sexual act with a young person than if they were to sexually threaten or coerce a child without payment.

**The tragic consequences of a life of prostitution for young persons are extensively documented in this Report. These serious harms justify the imposition of a specific criminal sanction against the customers of young prosti-**

tutes. Depending on the age of the young person and the nature of the sexual act engaged in, the customer of a young prostitute could also be charged with one of the sexual offences against children in the *Criminal Code*.

The Committee recommends that the *Criminal Code* be amended to provide for a separate offence in the following terms:

1. Every one who offers, provides, attempts or agrees to offer or provide, money or other consideration to a young person for the purpose of engaging in a sexual act with, against, or upon such young person, is guilty of an indictable offence and is liable to imprisonment for two years.
2. For the purpose of this section, "young person" means a person who is under 18 years of age.
3. It is no defence to a charge under this section that the accused believed the person to be 18 years of age or older.

The Committee's research findings indicate that the clients of prostitutes pose at least an equal if not a greater public nuisance than do the prostitutes themselves. While many tricks attempt to solicit the services of young prostitutes from within the confines of a motor vehicle, the law, as presently constituted, does not take this fact into account. In light of its research findings, the Committee endorses the legislative proposals of the *Criminal Law Reform Act, 1984* (Bill C-19) which would make the "soliciting" offence in section 195.1 applicable to tricks as well as to prostitutes and would widen the definition of "public place" to include a motor vehicle located in or on a public place.

In addition to the imposition of criminal sanctions against the customers of juvenile prostitutes, the Committee believes that social sanctions must be invoked as a powerful means of deterring persons who sexually exploit young persons by means of prostitution. The information given to the Committee by these youths leaves no doubt that most of their customers would not wish to have their identities known publicly as persons who had used the services of juvenile prostitutes.

Legal provisions are available which permit the public identification of persons who are convicted of soliciting the services of young prostitutes. However, on the basis of its extensive research, (Chapter 22, *Publication of Victims' Names*), the Committee found that in practice while the names of persons convicted of other crimes, such as robbery or theft, were given prominence in the media, this was seldom done in relation to persons convicted of soliciting prostitutes. These accounts in the press, for instance, typically only report that a number of persons who remain unidentified were found on the premises of a bawdy-house.

The Committee believes that the publishing of the names of persons convicted of soliciting young prostitutes would serve as a contributory deterrent to persons inclined to seek the sexual services of juvenile prostitutes. The pros-



pect of public exposure and humiliation and the resultant loss of reputation, family, friends and even, in some instances, of business, would suffice in many instances to dissuade these persons from availing themselves of the sexual services of young prostitutes.

The Committee recommends that the Office of the Commissioner in conjunction with the national and provincial associations for the public media mount a program of giving prominent publicity to the names of persons convicted of soliciting juvenile prostitutes who are under age 18.

## Fear of Disclosing Information about Pimps

The Committee's research indicates that the pimps who are involved with juveniles are exclusively males and that they only control female prostitutes. While a few male juvenile prostitutes stated that they had worked for pimps, the working arrangements which they described did not accord with the definition of pimping adopted in this study. The young males who said that they had worked with pimps had either provided escort services for some of their customers, or in some instances, they had loaned or given money to tricks who were their homosexual lovers. There is no evidence in their accounts that the youths in question had been exploited which is the essential attribute of the vicious control exercised by pimps over female juvenile prostitutes.

The clear reluctance of many young girls to talk about, or even to admit the existence of, their pimps is largely attributable to their fear of these violent and often sadistic persons who wield commanding power over their lives. Most of these young prostitutes believe, with justification, that they will be physically abused and harshly punished if they displease their pimps. The Committee recognized that receiving potentially incriminating information from young female prostitutes would have been a certain way for the girls who provided it to have aroused the ire of their pimps, particularly if the information divulged had later been used as evidence against the pimps. For these reasons, while most of the female juvenile prostitutes were initially defensive or evasive when they were asked about their pimps, many of them, however, trusted the assurance of confidentiality given by the Committee and provided valuable information about who their pimps were and the nature of their working arrangements with them.

Many girls who work on the streets believe that a prostitute who gives evidence against a pimp is almost certain to be murdered, if not by her own pimp, then by his fellow pimps. These murders are purported to be extraordinarily brutal and the prostitutes claim that they are accomplished by severe beatings of head and face. Another palpable fear of female prostitutes which suffices to dissuade many of them from giving information about their pimps is that of being ostracized by the other prostitutes in whose company they work. Furthermore, the Committee's survey indicates that many of the young prostitutes

either were "in love" with their pimps, or were psychologically dependent upon them to such an extent that they could not conceive of functioning without them. As a result, many girls adopted a highly protective attitude toward their pimps and were unwilling to divulge information which might have proved damaging to them, or which portrayed them in a negative light.

## The Pimps' Regimen

On the basis of the findings of the National Juvenile Prostitution Survey, it appears that female juvenile prostitutes who are working on the streets of Canadian cities are seldom controlled by large-scale, highly organized prostitution rings. Although few such rings were encountered in the study, it is recalled that the findings were obtained from the most readily visible group of juvenile prostitutes, namely, those who were working on the streets. The Committee's findings indicate that generally a pimp either worked with one girl (38.2 per cent) or had a small number of girls in his employ (52.7 per cent). Information was not available for 9.1 per cent of the girls in the survey who said that they had worked with pimps.

In several large Canadian cities, it is difficult for a girl to work on the street without a pimp, not because pimps perform any vital function for prostitutes, but rather because they actively recruit or harass any girl who attempts to work independently. Among the prostitutes, themselves, it was rumoured to be necessary to have a pimp to provide some ill-defined form of protection, but this "protection" appeared to amount to little more than the warding off of the recruitment efforts by other pimps. Pimps generally did not solicit clients for their girls and did not help them to negotiate with tricks. As a rule, these functions were performed by the prostitutes themselves. Once a pimp had formed an association with a girl, he was likely to supply her with drugs in order to maintain her dependence upon him. (One girl who was interviewed announced that she intended to work without a pimp; a short time later, a pimp who had recently been harassing her broke into her room and forcibly injected her with heroin. Soon afterwards, she was addicted and working for him). Some areas of the cities in which the Committee conducted the survey were almost entirely dominated by pimps; in these areas, it was a virtual impossibility for a prostitute to work independently.

The regimen of the pimps is characterized alternately by extremes of affection and brutality. Although beatings and other forms of physical abuse and emotional degradation and humiliation were common, many girls stated that they loved their pimps and that their pimps loved them.

Few of the prostitutes thought of their pimps as pimps or referred to them in this manner. Rather, they described their pimps as boyfriends, lovers or fiancées, and by so doing, they refused to admit to themselves that they were in fact working for pimps. The girls thought of pimps as men who forced prosti-



tutes to work for them when they were sick, who took all of their money from them and who beat them regularly. Girls who voluntarily gave their earnings to their pimps, who were allowed to recuperate when they were ill, and who were only beaten occasionally were thereby able to rationalize that they were not working for real pimps, but that they were different from other prostitutes because their “boyfriends” loved them, and were not merely interested in their earnings. By refusing to admit to themselves that they worked for pimps, the girls were able to rationalize that they were not like other girls who worked on the streets who were “sluts” or “whores”.

In contrast, the attitude evinced by the pimps towards the girls working for them frequently appeared to be one of unbridled contempt. The prostitute was regarded and treated as stupid, weak and a natural slave to her pimp. One girl stated that her pimp often told her that “Man is the ruler, woman the ruled”. This attitude of contempt was openly communicated to the prostitutes and was inculcated by them, reinforcing their poor estimation of themselves. A few prostitutes who were interviewed in the presence of their pimps made no objection to insulting interjections made by the pimps. By cultivating the young prostitute’s feelings of worthlessness, stupidity and inability to accomplish anything for herself, the pimp enhanced the girl’s vulnerability. The girl was made to feel that she needed “her man” because she was incapable of taking care of herself. She also came to see herself as lucky to have her pimp, even though he may have abused her, because no one else would bother with someone as worthless as herself.

Generally, a prostitute turned over all or most of her earnings to her pimp. Failure to render an accurate account of the evening’s income was usually a transgression of sufficient gravity to warrant a severe beating. Often pimps set quotas for their girls. A prostitute who was unable to do sufficient business to meet the quota risked violence at the hands of her pimp. The Committee’s researchers found that most street prostitutes seldom actively propositioned prospective clients except at the end of a working night on which they had yet to fulfill their quotas; only then were they desperate enough in order to find tricks that they risked creating a nuisance and drawing police attention to themselves.

After the prostitute had turned her earnings over to her pimp, it was usual for the pimp to return a small sum of money to her to be spent on food, cigarettes, prophylactics or clothes. Considering the earning potential of a young prostitute who worked the street on a regular basis, it is evident that a pimp was able to reap a substantial income by living on the avails of his girl’s professional activities. However, few pimps appeared to be wealthy. Instead, many ran through their girls’ incomes by gambling, buying drugs and spending impulsively on luxury items. The money obtained was seldom used or invested for the benefit of the young prostitutes who took the risks to earn it.

The Committee’s research indicates that females became far more locked into the life of street prostitution than males who worked on the street, and



that this difference was largely due to the role played by pimps. While a male prostitute's career typically ended by the time he reached his early twenties (i.e., by the time he lost his youthful appearance and ceased to appeal to his clientele), a number of female street prostitutes were encountered in the course of the survey who were in their twenties, thirties and even their forties. As these women became older and less capable of competing for tricks with juvenile prostitutes, they were forced by economic necessity to move into seedier, more dangerous streets, away from the areas where the younger girls prostituted themselves, and to charge lower prices for their services. The inability of these women to break away from a lifestyle which, as time passed, had become less exciting and progressively more destructive, is attributable in part to their continued dependency upon their pimps.

The Committee found that male and female juvenile prostitutes tended to have somewhat different working schedules. It was observed, for instance, that a different group of males would be working on the street from one week to the next, while many of the same girls could be found working in their usual locations over fairly extended periods of time. The explanation for this difference appears to be that male prostitutes were independent, and tended to get off the street or to get temporary jobs whenever they became disenchanted with selling their sexual services. The females, in contrast, were bound to the street by their pimps, their need to meet quotas and the feelings of love, fear, dependency and helplessness that their pimps had systematically instilled in them. The Committee's research indicates that while most young females who engaged in prostitution had initially found their way onto the street by themselves, it was the pimps who kept them there.

These relationships, however, between particular prostitutes and pimps were not always durable. Many of the girls had been involved with more than one pimp. The process of going from one pimp to another may be likened to that of finding a new boyfriend for ordinary adolescent girls. In some instances, a girl may have arranged to leave her pimp by paying him a sum of money. A girl who wished to leave her pimp was likely to have little difficulty in slipping away during her work hours, since most female prostitutes were not closely scrutinized by their pimps while they worked on the street. For most female prostitutes, the act of leaving a pimp posed less of a problem than becoming psychologically prepared to leave. Many pimps regularly threatened their girls with terrible punishments if they attempted to run away. A girl may have feared that if she left her pimp, he would follow her, find her, and subject her to brutal punishment before bringing her back to work for him. For most girls, returning home was not a viable option either because of the prospect of parental rejection or because they had originally started to work on the street due to conditions that they had felt were intolerable at home. In the absence of a safe place to run to, many girls who might otherwise have left their pimps felt constrained to continue working for them.

A number of the young female prostitutes had become pregnant. At the urgings of their pimps, most of them had continued to work on the streets

almost until they came to term (or, to use street terminology, until they “drop the kid”). Prostitutes who were pregnant insisted that their pimps were the fathers, even though they often had no way of knowing this to be the case, since many of them, when working, did not use any form of contraception with any consistency. A number of pregnant girls stated that they intended to retire from prostitution as soon as their babies were born. These girls anticipated that they and their babies would then be cared for by their pimps.

Some of the young female prostitutes had been drawn into criminal activities through their association with pimps. Usually, the involvement of the girl in the given offence was subsidiary to that of the pimp, as for example, where a prostitute had acted as a lookout while her pimp had conducted a drug deal. Typically, the pimp was the sole beneficiary of these unlawful transactions. The girl either was given no share in the proceeds of the offence or merely received some token remuneration, even though she had placed herself at risk of criminal sanction. Refusal to assist the pimp would undoubtedly result in beatings or some more severe form of punishment.

In the Committee's judgment, the relationship between young prostitutes and pimps encompasses one of the most severe forms of the abuse of children and youths, sexual or otherwise, that currently occurs in Canadian society. The relationship is based on two forms of ruthless exploitation: psychological and economic. The pimp exploits and cultivates the prostitute's vulnerabilities—her low self-esteem, her feelings of helplessness, her loneliness on the street and her need for love and protection. These weaknesses are the fetters with which the pimp binds the girl to him and keeps her on the street. Economically, pimps exploit prostitutes by drawing them into a form of virtual slave labour, or at least into a relationship in which one party, the pimp, provides a service whose value is vastly outweighed by the amount which the other party, the prostitute, is required to pay for it. The cost to the prostitute of working for a pimp goes far beyond the earnings that she gives him; it amounts to the girl's forfeiture of her future. Opportunities to obtain a better education, to become free of drug and alcohol addiction, to sort out emotional problems, to return to a normal lifestyle and to enter into healthy, caring relationships, are seriously jeopardized or permanently destroyed. The relationship between juvenile prostitutes and pimps is parasitic and life-destroying. In the Committee's judgment, it must be viewed as a problem of the utmost gravity. It must be stopped.

## Profile of Pimps

Of the 145 female juvenile prostitutes from whom information was obtained, a small number was willing to admit that they were currently working for pimps, more were prepared to describe pimps for whom they had previously worked, and over three in four were well informed about pimps and the nature of the working arrangements between them and the prostitutes whom they controlled.



Female Juvenile Prostitutes' Relations with Pimps	Females	
	Number (n = 145)	Non-Accum. %
Currently working for a pimp	15	10.3
Previously worked for pimp	55	37.9
Knowledge of working arrangements between pimps and prostitutes	113	77.9

Only about one in 10 girls was prepared to admit that she was working for a pimp when the survey was conducted. When asked if they had ever worked for a pimp, over a third (37.9 per cent) were willing to report that they had, and of this group of 55 girls, 52 immediately answered this question while an additional three girls subsequently provided descriptions of pimps for whom they had previously worked.

On the basis of its contacts with juvenile prostitutes, the Committee considers that the reported prevalence of pimping sharply under-represents the true extent to which the lives of these girls are controlled by pimps. Many of these girls were afraid of their pimps; some had been brutally beaten by them. Except for young girls who are just starting to engage in "the life" on the street by themselves, the Committee believes that, of those who have engaged in prostitution for even a short period, a more accurate estimate of the prevalence of pimping is that between half and three-quarters of female juvenile prostitutes were being exploited by this means.

Of the girls who were willing to admit that they had worked for a pimp, two-thirds (63.5 per cent) had worked for one pimp, about one in six (15.4 per cent) had worked for two pimps, and about one in seven (13.5 per cent) had worked for three pimps. Three girls said that they had been employed by four pimps, while one claimed that at different times she had worked for eight pimps.

The average age of the pimps was 24.7 years. About one in seven (14.8 per cent) was 20 years-old or younger and about an equal proportion was age 30 or older.

The majority of the pimps (70.9 per cent) were single, while two were married, one was separated, four were divorced, one was living in a common-law arrangement and two were living with someone. The marital status of six was unknown. In describing the occupations of the pimps, four girls said that their pimps were unemployed, seven reported that the pimp had some sort of service job, five said that he was a blue collar worker or manual labourer, one noted that the pimp was a hustler himself, and 33 (60.0 per cent) stated that the man with whom they worked was a full-time pimp. Information was not given concerning the employment status of five pimps.



Age of Pimp	Number	Per Cent
16	1	1.8
17	1	1.8
19	1	1.8
20	5	9.1
21	4	7.3
22	3	5.5
23	7	12.7
24	3	5.5
25	10	18.2
26	3	5.5
27	5	9.1
28	4	7.3
30	4	7.3
32	1	1.8
35	1	1.8
37	1	1.8
Not reported	1	1.8
TOTAL	55	100.1*

\*Rounding error

Information was only reported about the level of education of three in five pimps (61.8 per cent). Of those for whom this information was available, about two in five (38.2 per cent) either had had some primary grade schooling or had reached the junior high school level, less than a third (29.4 per cent) had attended but not completed high school, about a quarter (26.5 per cent) had finished high school, and two had had some post-secondary education (5.9 per cent). These incomplete findings generally accord those concerning the pimps' employment status. Most of the pimps were men in their mid-twenties, were poorly educated, and few had held full-time conventional types of employment. Only one in nine (10.9 per cent) was reported to have been working at a full-time job (other than pimping) and about one in five (21.8 per cent) had some form of part-time work.

Over two in three of the pimps (67.3 per cent) were living mainly or completely on the avails of prostitution. The girls' descriptions of these men who were then or had previously controlled their lives reveal a wide range of emotional reactions with which they viewed them. Despite some of their positive comments about their pimps, as the findings presented later in this chapter clearly show, many of these men were violent and vicious individuals who physically coerced the girls whose lives they dominated.

- "Streetwise, charming, a good lover."
- "Good-looking, good in bed, sensitive, a sweet talker."
- "He was kind, yet cold and egotistical."
- "He is strong, tough and cute."
- "He is tall, dark and handsome and he loves me."
- "Nice guy."
- "Mentally lazy, but decent, not abusive."
- "He expects me to be true to him."
- "Handsome, strong, vicious."
- "Affectionate, fun to be with, sweet, good-looking."
- "Fair, a hard worker. He bosses me somewhat."
- "A good-looking, gentle, handsome man who is generous with others and is always laughing."
- "An average guy."
- "A good-looking biker; low-key, but I wouldn't want to anger him."
- "Attractive, strong-looking and strong-willed."
- "Fast-talking, funny; he talks very softly."
- "Good-looking, basically kind to me. He had kind eyes but a cold face. I never knew his feelings. I saw him throw other girls around, but never me."
- "An asshole."
- "Ugly and sick. He should be shot."
- "Had a bad temper, drank too much and did too many drugs."
- "A bastard. He enjoyed hurting people."
- "A prick, a dope addict. He thought only of money and drugs."
- "Forceful; he beat me like an animal."
- "Very dominant. He has to have his own way, which I usually give in to."
- "Schizophrenic, violent. He has an extensive criminal record."

## Initial Contacts

Twenty-four girls (43.6 per cent) stated that they had first met their current or previous pimp by being approached by him. Another five girls (9.1 per cent) said that they had approached the pimp. As noted previously, some young prostitutes may seek to work for pimps because it is widely believed by girls working on the street that they need a man to protect and look after them. About half of the girls (47.3 per cent) were first introduced to their pimps by

other persons, including a relative of the pimp, a neighbour, a friend, other prostitutes, another pimp, a sister and an acquaintance. One girl said that she had first met her pimp when both had been staying in the same group home. Another girl stated that she had applied for a job in a bar advertised in a newspaper, only to discover that the advertisement had been placed by a ring of pimps.

Of the 55 female juvenile prostitutes who were willing to discuss their current or previous pimps, 43 (78.2 per cent) said that they had been strongly attracted to the pimp when they had first met him. Their reasons included:

- He befriended the girl.
- He offered the girl a place to stay.
- He offered the girl clothes or meals.
- The girl was physically or sexually attracted to him.
- He was a nice guy.
- He was a very strong person upon whom the girl felt she could depend and with whom she believed she could feel secure.
- There was no one else to turn to.
- He was "a big name" on the street and the girl felt she could use him.
- "He was taboo, black, and I heard they love well".
- He promised the girl drugs.
- "He said he needed me".

Fourteen girls (25.5 per cent) stated that their pimps had abused, threatened or beaten them soon after their first meeting. The details of these incidents are:

- The pimp threatened to break girl's arm.
- The pimp grabbed the girl and frightened her.
- The girl was drugged, gang raped and was told afterwards that she had been sold.
- The pimp told the girl that she was pretty and if she didn't want her face smashed in, she had better work for him.
- The pimp told the girl that if she didn't work for him, he would make sure that she never worked again.
- The pimp struck girl.
- The pimp transacted a drug deal with the girl and then threatened her with a gun.
- The pimp threatened to send other prostitutes out against her.

Twenty-nine girls (52.7 per cent) stated that after their initial contacts with these men, the pimps had promptly put them to work on the street. At this time, 19 girls (34.5 per cent) had moved in with the pimp, while in three



instances the pimp had moved in with the girl. When they were interviewed, 11 girls said that they were living with their pimps.

When they were asked why they worked for pimps, the girls' replies reveal a complex mixture of emotions involving love and fear. The reasons most frequently cited (multiple replies were given) were that: the girl loved the pimp (43.6 per cent); the pimp loved her (25.5 per cent); he beat or threatened to beat her (47.3 per cent); and he had threatened or attempted to kill her (20.0 per cent). The other reasons given by these girls included:

- The pimp needed the money.
- The pimp was unable to get a job.
- The pimp was in the process of getting a job.
- The pimp was coming into money eventually and the girl believed he would share it with her.
- The girl and her pimp were engaged.
- The girl and her pimp were married.
- The girl was pregnant with the pimp's baby.
- To pay back money that the pimp had lent the girl.
- "He treated me well; he promised to travel with me."
- To avoid being harassed by other pimps.
- "He protected me."
- "He gets me drugs."
- "I needed someone to understand me."
- "He provided protection from other prostitutes."
- The girl was being chased by a motorcycle gang and felt that the pimp could offer her protection.
- The pimp occasionally arranged tricks for the girl.
- "I was doing it for 'us'."
- The pimp threatened to tell the girl's parents that she was a prostitute.

## Living on the Avails of Prostitution

Despite their firm control of the girls' lives, few pimps were actively involved in directly procuring clients for the young prostitutes who worked for them. Only 10 girls said that their pimps had ever solicited clients for them. Sixteen girls stated that their pimps acted as bodyguards for them and 11 said that their pimps met them for coffee breaks. Ten girls reported that their pimps only met them to pick up money and 19 girls said that their pimps stayed away from the areas where they worked. One girl noted that her pimp hired "recruiters" to observe his girls on the street and report back to him; four girls stated that, while working, they identified themselves to their customers by mentioning their pimps' names, in order to indicate for whom they were working.

The daily quotas set by the pimps for their girls' earnings are listed in Table 46.3. As noted in Chapter 45, *Working on the Street*, the amount of time spent by girls working as prostitutes on the street varied considerably. The information obtained concerning the quotas set by pimps given by 32 girls indicates that on weekdays they were expected to earn an average of about \$225 and on weekends about \$256. When the number of girls who had quotas established by pimps is subtracted from all female juvenile prostitutes who reported their average daily gross earnings, the former potentially would have averaged \$225 on weekdays while the latter (a significant proportion of whom may also have worked for pimps) averaged about \$212. An almost equal proportion in each group (female juvenile prostitutes having quotas set by pimps, 59.4 per cent; other female juvenile prostitutes, 58.4 per cent) would have earned less than the daily average for all female juvenile prostitutes of \$215.49.

**Table 46.3**  
**Earnings' Quotas Set for Female Juvenile Prostitutes**  
**by Their Pimps**

Earnings' Quotas Set by Pimps for Female Juvenile Prostitutes	Weekdays		Weekends	
	Number	Per Cent	Number	Per Cent
100.00	8	25.0	6	18.8
150.00	3	9.4	3	9.4
200.00	8	25.0	6	18.8
250.00	4	12.5	4	12.5
300.00	5	15.6	5	15.6
350.00	—	—	1	3.1
400.00	2	6.3	4	12.5
500.00	1	3.1	2	6.3
550.00	1	3.1	1	3.1
TOTAL	32	100.0	32	100.1*

*National Juvenile Prostitution Survey.* Of the 55 female juvenile prostitutes who were working or had worked for pimps, 32 provided information concerning earnings' quotas that had been established for them.

\*Rounding error

An indication of the potential amount of money that a pimp may reap from a young prostitute can be estimated by considering a hypothetical case in which a girl worked five days a week (three weekdays, Saturday and Sunday) for 45 weeks each year. On the basis of the average quotas set by the pimps, the girl's annual earnings would be about \$53,578.

Of the 55 girls who were working for a pimp or had worked for one in the past, 40 (72.7 per cent) stated that they turned over all of their earnings to

these men. Two girls said that they turned over three-quarters of their earnings, two said they gave up 70 per cent, and eight said that they gave their pimps half of the money that they earned. One girl stated that her pimp took none of her earnings.

**Table 46.4**  
**Amount of Money Given to Female Juvenile Prostitutes**  
**on a Daily Basis by Their Pimps**

Amount of Money Given by Pimps to Female Juvenile Prostitutes (\$)	Female Juvenile Prostitutes	
	Number	Per Cent
0	9	16.4
1	1	1.8
2	1	1.8
5	7	12.7
10	4	7.3
20	10	18.2
25	5	9.1
30	2	3.6
35	1	1.8
40	1	1.8
45	1	1.8
50	2	3.6
75	1	1.8
80	1	1.8
100 and over	4	7.3
Not reported	5	9.1
<b>TOTAL</b>	<b>55</b>	<b>99.9*</b>

*National Juvenile Prostitution Survey.*

\*Rounding error

There is no doubt that pimping may be a highly lucrative line of work for these men who were typically poorly educated and who had had little conventional work experience. On average, the pimps paid back to the young prostitutes \$33.76 each day. If the case of the hypothetical female juvenile prostitute who worked five days a week for 45 weeks is again taken as an example, then on an annual basis, she would have received about \$7596, or 14.2 per cent, of what she had earned by selling her sexual services. The pimp would have retained \$45,982, and this total can be multiplied by the number of young females whom he controlled in his “stable”.



The uses to which these females put the money given them by their pimps were generally quite modest. The items that they most frequently claimed they used this money to purchase were coffee, tea or soft drinks, food, condoms, cigarettes and clothes. By contrast, the young girls reported that their pimps spent the money that they turned over to them on drugs, liquor, gambling, jewellery, cars, household goods, and clothes, either for themselves or for their girls.

About two-thirds of the 55 girls (65.5 per cent) said that they met their pimps once each working evening in order to hand over their earnings, although a few met their pimps twice or several times each evening for this purpose. These meetings occurred in a variety of locations including downtown streets, the pimp's home, bars, coffee or donut shops, and at subway stops. Two girls said that their pimps collected their earnings after they had turned every second trick, while one said her pimp met her every half hour, and another stated that she telephoned her pimp to pick up the money. One girl said that she simply supported her pimp and paid his bills, rather than meeting him on a regular basis to give him her earnings.

## Pimping and Violence

When they were asked if they had ever been beaten by their pimps, 44 girls said that they had, 10 had not been beaten and one said that her pimp had threatened to beat her. Thirteen girls said that their pimps had beaten them regularly, 21 stated that they were beaten by their pimps on an occasional basis, four said they were beaten only once and two stated that their pimps only beat them when they deserved it.

Despite the fact that four in five (80.0 per cent) of the 55 girls who had worked with pimps had been beaten by them, about half of these young prostitutes (47.3 per cent) said that they were proud to be working with these individuals. About an equal proportion (45.5 per cent) held strong negative views about their pimps and four girls did not reply to this question.

The girls who were proud of their pimps explained that their feelings stemmed from the "kindness", understanding and "psychological support" that their pimps had given them. Speaking of the time when she had first become involved with her pimp, one girl said, "At that time, he made me feel what I was doing was important". Another stated, "He treated me special, like a princess, until I threatened to leave him". One girl said she was proud of her pimp because he was physically attractive. Others took pride in the fact that their pimps were well known and respected on the street. Two girls stated that they were afraid of their pimps, while another simply stated that "pimps are all lowlife". One girl's comments captured the essence of the fear and the sense of dependency felt by many of these young prostitutes. "It's not a matter of being proud; you have to work for a man to be able to work on the street."

**Table 46.5**  
**Reasons Why Female Juvenile Prostitutes**  
**had been Beaten by Their Pimps**

Reasons Why Female Juvenile Prostitutes had been Beaten by Pimps	Female Juvenile Prostitutes	
	Number (n=55)	Non- Accum. %
Holding back money	11	20.0
Attempting to leave pimp	12	21.8
Refusing to work	7	12.7
Talking to police	3	5.4
Pimp felt like beating the girl	14	25.5
Failure to meet quota	5	9.1
Girl had been disrespectful	1	1.8
Jealousy	4	7.3
Pimp was drunk	2	
Argument over drugs	1	1.8
Girl had said something pimp did not like	3	3.6
Girl had listened to gossip about pimp	1	1.8
General disobedience	1	1.8
Because group of pimps were fighting over the girl as prop- erty	1	1.8
Girl had lied to pimp	1	1.8
Girl had talked about pimp in public	1	1.8

*National Juvenile Prostitution Survey.*

The young girls were asked two questions concerning the worst situation that they knew of involving a prostitute and her pimp. In the first question, the girls were asked to describe the worst situation in which they had ever been involved with their pimps. The second question asked the girls to describe the worst incident of which they had ever heard involving a prostitute and her pimp.

### Worst Personal Experiences with Pimps

- The girl was "slapped around" for minor disobedience.
- The girl's face was severely beaten, resulting in bruising and broken bones.
- The girl's head was "split open" with a belt buckle; the girl was then beaten with a coat hanger heated on a stove for not coming when her pimp called her.

- The girl was beaten in a public place.
- The pimp jumped on the girl's face, breaking her nose.
- The pimp attempted to run the girl down in his car.
- The pimp attempted to strangle the girl; she lost consciousness.
- The pimp beat the girl with a baseball bat and forced her out of house in the middle of the night while she was only wearing pajamas.
- The girl was beaten by four male friends of the pimp who burned her breasts, choked her and placed a gun at her head.
- The pimp heated a wire clothes hanger on a stove, beat the girl with it and burned the soles of her feet.
- The pimp raped the girl.
- The girl stabbed pimp in the back in self-defence.
- The pimp got the girl's friend pregnant.
- The pimp threw the girl and her belongings out in the rain.
- The pimp threw the girl against a wall.
- The pimp threw knives at the girl, forced her to swallow his urine and defecated in her mouth.
- The pimp punched the girl in the mouth.
- The pimp pulled a knife and threatened to cut the girl's throat.
- When the girl lost \$400, her pimp beat her for two hours with his fists and boots while she sat in a chair. The pimp then slashed the girl's wrists. The girl was hospitalized for between three and four months.

## Worst Known Incidents Involving Pimps

A total of 113 of the 145 female juvenile prostitutes provided descriptions concerning the worst incident about which they had heard involving a prostitute and her pimp. Their replies included:

- The prostitute was murdered.
- The prostitute was beaten to death.
- The prostitute was shot to death.
- The prostitute was stabbed to death.
- The prostitute was killed by overdose of a drug forcibly injected.
- The prostitute was beaten with a heated clothes hanger.
- The prostitute was severely beaten by her pimp, resulting in broken bones; the girl was hospitalized.
- The prostitute received a beating from her pimp which resulted in a bruised face and black eyes.
- The prostitute was badly slashed with a knife by her pimp.
- The prostitute was beaten with a baseball bat by her pimp.
- The prostitute was beaten by her pimp in a public place.



- The pimp made the prostitute stand naked on a bridge during the winter.
- The prostitute had foreign objects forced into her vagina.
- The pimp maintained prostitute's drug addiction in order to keep her working.
- The pimp "hit up" (i.e., injected) the prostitute with battery acid.
- The prostitute was blinded after pimp threw gasoline on her and set her on fire.
- The pimp cut the prostitute's baby "out of her stomach".
- The pimp raped and stabbed the prostitute.
- The pimp forced a hot curling iron into the prostitute's vagina.
- The pimp, sitting in car, held the prostitute's arm as he drove around a parking lot, dragging her over the concrete pavement.
- The prostitute was beaten with a belt by her pimp.
- The pimp beat the prostitute with a gun and "split open" her head.
- The pimp pushed the prostitute in front of an oncoming subway train.
- The pimp beat the prostitute "black and blue" and chopped off her hair with a machete.
- The pimp gave the prostitute a beating and dragged her around by the hair; this resulted in a broken nose and collar bone.
- The pimp inflicted cigarette burns on the prostitute's face.
- The pimp locked the prostitute in a rat-infested cellar.
- The pimp held the prostitute's head under water until she lost consciousness.
- The pimp gave the prostitute a beating that blinded her in one eye.

The multiple reasons cited by the female juvenile prostitutes concerning why they had been assaulted, and in some instances, severely injured by their pimps indicate the nature of the vicious coercion that is inherent in the pimp — prostitute relationship. The brutality of pimps, often calculated, sometimes irrational and sadistic, emerges from the finding that some pimps had threatened to beat their girls for holding back money, attempting to leave them, or failing to meet quotas, while others had become violent simply because they felt like beating the girls. The pimps' domination of the girls who worked for them is revealed by the fact that in some instances general disobedience, disrespect or saying something that the pimp did not like constituted sufficient provocation to warrant threats or actual beatings.

## Strengthening Criminal Sanctions against Pimps

**The role played by pimps in introducing and coercing young females into a life of prostitution, and of locking them into this life by means of drugs, violence, and threats of violence, is apparent from the Committee's research. In the Committee's opinion, the parasitic relationship between pimps and the**

young prostitutes in their employ is an intolerable form of child abuse. The pimp cultivates and exploits the prostitute's vulnerabilities — her low self-esteem, her loneliness on the street and her need for love and protection. The oppressive social environment in which young prostitutes are compelled to work, and which the pimp actively engenders, robs these young persons of their human dignity, and of opportunities for pursuing a more healthful and constructive way of life. In the Committee's view, the response of the criminal law to this egregious exploitation of the young must be certain and severe.

The Committee's research has unearthed a number of social facts about juvenile prostitution which can serve as a basis for strengthening the protection afforded to young persons by the offences of "procuring" and "living on the avails of prostitution" in section 195 of the *Criminal Code*. Although some of the procuring offences in section 195 apply only to the procuring of a person to have illicit sexual intercourse with another person, the Committee's research reveals that the act of sexual intercourse is only one of many sexual acts which young prostitutes are procured to perform. The Committee recommends that section 195 of the *Criminal Code* be amended accordingly.

Further, in light of the Committee's finding that some pimps have only one prostitute working for them (and, in many cases, living with them), the Committee recommends that the presumption in section 195(2) be widened to provide that evidence that a person lives with or is habitually in the company of a prostitute or prostitutes is, in the absence of evidence to the contrary, proof that the person lives on the avails of prostitution. These reforms would materially strengthen the impact of the *Criminal Code* in this context and would better correspond to the modern realities of juvenile prostitution in Canada.

In the Committee's judgment, the limitation period for prosecution in section 195(4) of the *Criminal Code*, and the corroboration requirement relating to the offences of "procuring" in section 195(3) of the *Criminal Code*, are neither necessary nor appropriate in the modern context of juvenile prostitution. The Committee sees no reason for requiring a prosecution under section 195 to be commenced within one year after the time the offence is alleged to have been committed. Limitation periods for the prosecution of indictable offences are highly exceptional in Canadian criminal law: the importance of society's interest in deterring and punishing this blatant exploitation of young persons argues strongly against any procedural limitation of this kind. In reference to section 195(3), the Committee adheres to its general principle that the credibility of a young victim of sexual abuse should be a matter of weight to be decided by the trier of fact, not a matter of presumed unreliability.

With respect to the sentences that should be available against individuals who procure young persons to engage in sexual acts with another person, or who live on the avails of the prostitution of young persons, the Committee considers that deterrence and denunciation must be the paramount sentencing considerations. The cold-blooded nature of the pimp's conduct, and its often life destroying implications for the young prostitutes who do his bidding, should have a mandatory sentence of imprisonment. The Committee can conceive of



no factors which could possibly mitigate the severity of this form of exploitation of the young.

The conduct of the pimp towards young prostitutes is premeditated, persistent and often brutal; the consequences of this relationship for young prostitutes are invariably oppressive and dehumanizing. Parliament has seen fit to prescribe a sentence of life imprisonment, with a minimum sentence of seven years' imprisonment, for persons convicted of grave sexual offences. In the judgment of the Committee, it can scarcely be argued that the procurers of young prostitutes pose any less of a threat to the well-being of Canadian society, or that the importance of deterring and denouncing the sexual procurement of young persons is any less compelling. The Committee therefore recommends that a sentence of 14 years' imprisonment, with a minimum mandatory sentence of two years' imprisonment, be prescribed for persons convicted of procuring, or of living on the avails of the prostitution of, a person who is under 18 years of age.

**The Committee recommends:**

- 1. That the phrase "illicit sexual intercourse" in section 195(1)(a), section 195(1)(b), and section 195(1)(i) of the *Criminal Code* be amended to read, "illicit sexual intercourse or any other sexual act".**
- 2. That the phrase "habitually in the company of prostitutes" in section 195(2) of the *Criminal Code* be amended to read, "habitually in the company of a prostitute or prostitutes".**
- 3. That section 195(3) of the *Criminal Code* be repealed.**
- 4. That section 195(4) of the *Criminal Code* be repealed.**
- 5. That section 195(1) of the *Criminal Code* be amended to provide for a sentence of 14 years' imprisonment, with a minimum mandatory sentence of two years' imprisonment, for an accused who is convicted of procuring, or of living on the avails of the prostitution of, a person who is under 18 years of age.**

In its meetings with senior police officers and on the basis of its research findings, the Committee learned of the difficulties entailed in laying charges against the customers of young prostitutes and the investigation and charging of pimps with whom these young prostitutes may associate. In light of their other enforcement responsibilities, most Canadian police forces have insufficient manpower to assign officers to the lengthy task of assembling the evidence requisite for the laying of charges against pimps. While such investigations are demonstrably feasible, each may entail several months of police investigation.

For these undertakings to be successful, it is essential to have police officers who are both especially trained and experienced in regard to these investigations and who are given sufficient time to be able to undertake these assignments. In addition to the reform of the prostitution-related offences, the



Committee believes that enforcement services must be considerably strengthened in order to permit them to succeed in laying charges against pimps who exploit juvenile prostitutes.

**The Committee recommends that the Office of the Commissioner in conjunction with the Department of Justice and the Department of the Solicitor General establish with the provinces a special federal-provincial cost-sharing program to provide specific support to municipalities enabling them to establish special police force units, having primary responsibilities for:**

- 1. Investigation and laying of charges against the clients of young prostitutes.**
- 2. Investigation and charging of pimps working with young prostitutes.**

## Summary

1. The vast majority of tricks regularly using the services of juvenile prostitutes are males; only 3.1 per cent had a predominantly female clientele. Half of the 229 juvenile prostitutes (50.2 per cent) had been approached for their services on at least one occasion by a woman.
2. Two-fifths of the males and less than a third of the females reported that their most recent trick had approached them on foot, while half of the boys and two-thirds of the girls said that their most recent customer had been in a vehicle.
3. The majority of the most recent tricks were estimated to be between the ages of 35 and 49.
4. About two-thirds of the most recent tricks of girls and about a third of the most recent tricks of boys were reported to have been married.
5. Proportionately more of the girls' most recent tricks were blue collar or service workers while a higher proportion of the males' most recent tricks were professionals, white collar workers or in management positions.
6. Most of the recent tricks of juvenile prostitutes were reported to have been friendly and talkative. In about one in 26 of these encounters, the juvenile prostitute had been either verbally or physically abused.
7. Over two in five of the most recent tricks of male juvenile prostitutes and a third of those of female juvenile prostitutes were reported to have been using alcohol, drugs or both types of substances prior to or during the transaction.
8. The juvenile prostitutes' descriptions of their customers suggest that those of girls typically had sexually unfulfilling home lives while those of boys were gay men who were "in the closet". Most of the youths regarded their customers either with hostility or as pathetic, contemptible and disgusting persons.

9. Over a third of the female juvenile prostitutes admitted that they were working or had previously worked with a pimp. Two-thirds of this group had worked for one pimp while the remainder had worked for two or more pimps.
10. The average age of the pimps was 24.7 years, about three in four were single, most were poorly educated and few had held full-time or part-time conventional jobs.
11. About two in five girls had initially been approached by the pimp while about half were first introduced to their pimps by other persons.
12. Following these initial contacts, a quarter of the girls had been abused, threatened or beaten by the pimps. Over half of the girls had immediately been sent to work on the street.
13. Only about one in five pimps was reported to have ever directly solicited clients for the prostitutes whom they controlled.
14. On average, based on reports given by 32 prostitutes, the daily quotas established by pimps for their girls' earnings were \$225 for weekdays and \$256 for weekends.
15. On the basis of the average quotas established, and if a girl worked five days each week for 45 weeks during the year, her earnings would be about \$53,578. Of this amount, she was repaid by the pimp, on average, about a seventh of what she had earned.
16. Four in five female juvenile prostitutes who had worked for pimps said that they had been beaten, in some instances severely, by these men.

Part IX

Pornography





## Chapter 47

# Sources of Information

The Committee's Terms of Reference ask it to determine the incidence and prevalence of sexual exploitation of children by way of pornography and to examine the question of access by children and youths to pornographic material. This chapter provides an overview of the issues dealt with in this section of the Report and of the sources of information assembled by the Committee pertaining to its Terms of Reference.

## Definition of Pornography

At the outset of its inquiry, the Committee was faced with the problem of the definition of pornography. Pornography is not a legal term, and usage has rendered its meaning unclear. The word is derived from the Greek *pornographos*, the "writing of harlots". Various lexicons have attributed somewhat different secondary meanings to the word and these have changed through time.

At the turn of the century, one major reference source referred to pornography as the "licentious painting employed to decorate the walls of rooms sacred to bacchanalian orgies, examples of which exist in Pompeii".<sup>1</sup> Several decades later, another lexicon defined the word to mean "the discussion of prostitution; obscene writing".<sup>2</sup> Two of the more recently compiled and widely used lexicons attribute somewhat different secondary meanings to the word. One of these sources defines pornography as "the depiction (as in writing or painting) of licentiousness or lewdness: a portrayal of erotic behaviour designed to cause sexual excitement".<sup>3</sup> In the second widely used lexicon, the word is defined as a "description of the life, manners, etc. of prostitutes and their patrons; hence, the expression or suggestion of obscene or unchaste subjects in literature or art".<sup>4</sup>

While, as noted, pornography is not a legal term, the words 'obscenity' and 'obscene' are legal terms. Whether a publication is obscene under Canadian law depends on whether a court considers that a dominant characteristic of the

publication is the undue exploitation of sex, or of sex and crime, horror, cruelty, or violence. Under Canadian law, a pornographic publication is not necessarily legally obscene, whereas an obscene publication is invariably pornographic. The several legal principles established in determining whether a publication meets the legal definition of obscenity are reviewed in Chapter 48.

Where the words 'pornography' or 'pornographic' are used in this Report, they refer to "the depiction of licentiousness or lewdness; a portrayal of erotic behaviour designed to cause sexual excitement". Two working definitions of pornography were used in assembling research findings, the first relating to actions taken by enforcement agencies and the second involving the specification of the types of sexual acts depicted. The latter definition was grounded on a specific listing of the types of sexually explicit depictions in which children have been directly involved as subjects and to the contents of matter to which children may be exposed.

Much of this section of the Report is devoted to providing concrete illustrations of 'pornography', 'child pornography,' and 'obscene' or 'immoral or indecent' publications based on: the actions taken by officials charged with administering the relevant Canadian law; an analysis of the contents of recent issues of the most popular pornographic magazines; and the findings of the National Population Survey in which a representative sample of Canadians was asked about its purchasing habits and views in relation to pornography.

## Sources of Information

In undertaking its review, the Committee had no doubt about the deeply rooted concerns of Canadians about the exploitation of children in the making of pornography and the accessibility of pornography to children. In recent years, considerable public pressure has mounted seeking remedial action by legislators at all levels of government — municipal, provincial and federal. Concerned groups have sought to have new legislation introduced or existing statutes amended in order to eliminate child pornography and restrict the display of pornography. These concerns have been fuelled by the enormous growth in the circulation of pornography in retail outlets across Canada, the open display of magazines having sexually explicit depictions on their covers, and the recognition that the advent of audio-visual equipment will likely accelerate the growth of the pornography trade in the country.

In seeking documentation concerning the two main questions relating to the issue of pornography set out in its Terms of Reference, the Committee initially reviewed the major national reports dealing with these issues for the United Kingdom and the United States and the proceedings of the House of Commons Justice and Legal Affairs Committee pertaining to the Canadian law of obscenity. The Committee undertook an extensive bibliographical search of the general and research literature for Canada seeking to identify pertinent



sources of information. It also contacted senior officials of the main enforcement services having responsibility for the enforcement of the Canadian law.

On the basis of its review, the Committee found that there was virtually no complete or reliable documentation for Canada about the dimensions of the pornography trade, the circulation and accessibility of this material, its production and the making of child pornography. What the Committee did find was a small assortment of scholarly treatises dealing with particular social, legal or moral aspects of pornography. Most of these were general reviews drawing upon secondary sources, typically detailing experience abroad. In relation to its Terms of Reference, the Committee found no single Canadian document that addressed the main issues which it had been asked to investigate.

Despite the lack of documentation, the Committee identified a number of primary sources having information about different aspects of pornography which had neither been co-ordinated nor assembled. With the full co-operation of these private and public agencies, this information was drawn upon and is presented in the chapters that follow. In addition, the Committee directly conducted several surveys seeking information about: the importation of pornography; its accessibility in retail outlets; and the purchasing habits and views of a nationally representative sample of Canadians.

## The Issues Considered

In the remainder of this chapter, a brief review is given of the Canadian law relating to the importation, making, distribution, sale and public display of sexually explicit materials.

In Chapter 48, *Law of Obscenity*, a fuller review is given of the various obscenity-related offences in federal law. This chapter reviews the existing network of federal laws which, taken together, regulate the different manifestations of child pornography in Canadian legal experience. A number of case studies are presented to illustrate the kinds of situations dealt with under the pertinent sections of the *Criminal Code* relating to obscenity.

In Chapter 49, *Provincial and Municipal Regulation*, a description is given of the regulation of the accessibility to children of pornographic material by provincial and municipal statutes. In the former category, the operation and guidelines of provincial film classification and/or censorship boards are considered, and a review is made of their application in relation to three films showing sexual violence and children in sexually explicit depictions. In the latter category, the use of provincial legislation by municipalities to regulate the display of pornography and its accessibility to young persons is reviewed.

In Chapter 50, *Enforcement Practice*, the enforcement of the various statutes enacted for the purpose of controlling sexually explicit and obscene materials (including child pornography) is reviewed. Specifically considered

are the mandate and operations of: Revenue Canada Customs and Excise Division; R.C.M.P. Customs and Excise Section; and provincial and municipal police forces.

On the basis of its initial review, the Committee learned that the major source of child pornography available in Canada was matter imported from abroad. With the co-operation of the main enforcement services involved — Revenue Canada Customs and Excise and R.C.M.P. Customs and Excise — information was compiled on 26,357 seizures between 1979 and 1981; these findings are given in Chapter 51, *Importation and Seizure*. The information obtained permitted an appraisal to be made of the detected volume of child pornography, regional trends and the types of materials involved.

Drawing upon findings provided by enforcement agencies, distributors and the surveys conducted, a description is given of the *Production and Distribution of Child Pornography* in Chapter 52. In addition, drawing upon case studies, different situations in which children may become involved with child pornographers are identified.

Before turning to a consideration of the circulation of pornographic magazines across Canada and their accessibility to children and youths, a detailed description is provided of the contents of the 11 best-selling pornographic magazines in Canada which had a combined Canadian sales total of over 14 million copies in 1981. The synopsis given in Chapter 53, *Contents of Pornography*, analyses the nature of the pictorial and written matter of these magazines which are readily accessible to Canadian children in a large number of retail outlets across the country.

The findings of three major surveys conducted by the Committee are provided in Chapter 54, *Circulation, Accessibility and Purchase*. This chapter focusses on the issue of accessibility to children of pornography. A review is given of the audited circulation statistics of the pornographic magazines whose contents were analyzed; the findings of the National Accessibility Survey of Retail Outlets focus on how pornographic magazines are displayed in stores across Canada. The findings from these two sources are complemented by those from the National Population Survey. Persons contacted in this survey were asked whether they had ever bought pornography, how old they had been when they had first made such a purchase, their knowledge and views about the display of pornography, and their opinions about its accessibility to children and youths.

In Chapter 55, *Associated Harms*, findings from several national surveys are presented concerning incidents involving exposure of pornography to children in which they were also sexually assaulted. The findings of the National Population Survey document the experiences of persons who were exposed as children to pornography against their will and the reported harms sustained. This chapter also draws upon case studies documenting these experiences.



While the Committee, with the valuable co-operation of a number of private and public agencies, assembled a considerable body of information about the circulation and display of pornographic magazines and the accessibility of this material to children and youths, it recognizes that information on certain important matters is still incomplete. In the Committee's judgment, however, the available findings constitute a reasonably firm basis upon which a number of actions can and should be taken by the Government of Canada which would afford children and youths greater protection from exploitation by means of pornography.

## Overview of Canadian Law

As with several other areas within the Committee's mandate, the legal regulation of the making, distribution, sale and public display of explicit sexual materials has both federal and provincial aspects. Further, Canada has assumed international obligations in this regard. Canada is a signatory nation to the *International Agreement for the Suppression of Obscene Publications*<sup>5</sup> and to the *International Convention for the Suppression of the Circulation and Traffic of Obscene Publications*,<sup>6</sup> both of which are instruments of the United Nations. Canada is also a signatory nation to the *Universal Postal Convention*,<sup>7</sup> which sets out the responsibilities of member countries in the Universal Postal Union concerning the transmission through the mails of obscene or immoral materials.

## Federal Legislation

The *Criminal Code* does not contain a specific offence relating to the making, distribution or sale of child pornography. The *Criminal Code* contains a variety of proscriptions relating to the making, distribution and sale of obscene materials, as well as a provision authorizing the seizure and forfeiture of obscene publications kept for sale or distribution.<sup>8</sup> The *Criminal Code* also makes it an offence to use the mails for the purpose of transmitting or delivering anything that is "obscene, indecent, immoral or scurrilous";<sup>9</sup> to print or publish, in relation to any judicial proceedings, any indecent matter or indecent medical, surgical or physiological details (with specified exceptions) that, if published, are calculated to injure public morals;<sup>10</sup> to present an immoral, indecent, or obscene theatrical performance;<sup>11</sup> and to exhibit publicly a disgusting object or an indecent show.<sup>12</sup>

The *Customs Tariff*<sup>13</sup> prohibits the importation into Canada of books or visual representations of an "immoral or indecent character," and the *Customs Act*<sup>14</sup> authorizes the seizure and forfeiture of any goods unlawfully imported into Canada. The *Customs Act* further provides for the issuance of "writs of assistance" (which are search warrants in continual effect) pursuant to the investigation of crimes suspected to have been committed against that Act.<sup>15</sup>



The *Canada Post Corporation Act*<sup>16</sup> provides that all mail coming into Canada which contains or is suspected to contain material which is prohibited entry (for example, "immoral or indecent" visual representations under the *Customs Tariff*) shall be submitted to a customs officer for examination, and authorizes the officer to open such mail (other than letters). The Act further authorizes the issuance of "prohibitory orders", which have the effect of preventing the delivery of mail to or by persons committing or attempting to commit an offence by using the postal service<sup>17</sup> (for example, the offence under section 164 of the *Criminal Code*).

Parliament also has an important presence in the area of electronic broadcasting. Under the *Broadcasting Act*,<sup>18</sup> the Canadian Radio-television and Telecommunications Commission (C.R.T.C.) is invested with plenary regulatory authority over radio, television, cable television, and pay television, and this includes the authority to establish limits on the kinds of sexually explicit representations that may legitimately be broadcast.<sup>19</sup>

## Provincial Legislation

The use of a child in the making of pornography has not been singled out in any Canadian jurisdiction as a specific category of harm which justifies state intervention into the child's family. Even so, where a child is used by his or her parent or guardian as a subject in a pornographic depiction, this would almost certainly render the child "in need of protection" under the child welfare legislation of each province and territory.

With respect to the access by children and youths to pornographic material, the provinces are empowered to regulate, by way of censorship, classification or other means, the public exhibition of films,<sup>20</sup> provided that the standards used by the provincial boards in so doing are prescribed by law.<sup>21</sup> Eight Canadian provinces have enacted legislation authorizing an administrative board to review films sought to be exhibited publicly within the province. Newfoundland and Prince Edward Island adopt and implement decisions made by the New Brunswick board. The Yukon and the Northwest Territories have adopted more informal systems of film classification.

The provinces also have constitutional jurisdiction to regulate the manner of display of pornographic materials disseminated within their borders. This regulation is typically accomplished by empowering municipalities within the province to enact "by-laws" outlining the conditions under which such materials must be displayed in retail outlets, with particular regard for the non-accessibility of these publications to children. By-laws of this sort have been enacted in a number of municipalities across Canada, including: Burlington, Ontario; Newmarket, Ontario; and Metropolitan Toronto, Ontario. A by-law enacted by the City of Hamilton, Ontario, which was designed to restrict access by young persons to sexually explicit magazines, was struck down on the basis that it was impermissibly vague in describing the sorts of magazines sought to be regulated.<sup>22</sup> The City of Victoria, British Columbia, has enacted a

by-law of even wider scope. Under the Victoria by-law, no business licence-holder or employee thereof may, in the course of such business, sell, lease, or offer for sale or lease, any film or video cassette that depicts real or simulated sexual activity combined with violence or coercion, or real or simulated sexual activity involving a person actually or apparently under the age of sixteen.<sup>23</sup>

## Summary

The law relating to the making and distribution of child pornography, and to the accessibility to children of pornographic material, involves difficult legal concepts and practical enforcement problems. When the Committee started its review, it found that there was a lack of reliable documentation about the operation of the existing law and in relation to the issues specified in its Terms of Reference. This section of the Report provides an analysis of the several legal principles which apply in this context, a description of how enforcement agencies in Canada operate to discharge their responsibilities under the law, and research findings on the importation and production of child pornography and on the accessibility to children of pornography.

## References

### Chapter 47: Sources of Information

- <sup>1</sup> *Webster's Unabridged Dictionary*. An American Dictionary of the English Language. Albany. G. and C. Merriam, 1903.
- <sup>2</sup> *Chamber's Twentieth Century Dictionary*. London. W. and R. Chambers, Ltd., 1939.
- <sup>3</sup> *Webster's Third New International Dictionary*, G. & C. Merriam, 1961.
- <sup>4</sup> *The Shorter Oxford English Dictionary on Historical Principles*, Oxford. Clarendon Press, 1955.
- <sup>5</sup> This Agreement first came into force in Canada on March 11, 1912. A Protocol to amend the agreement was signed by Canada on May 4, 1949, on which date the Agreement became an instrument of the United Nations.
- <sup>6</sup> This Convention was originally signed by Canada on November 24, 1947. On May 4, 1949, it became an instrument of the United Nations.
- <sup>7</sup> The provisions of the *Universal Postal Convention* came into force in Canada on September 8, 1975. Article 33 of the Convention forbids the insertion of obscene or immoral items in the letter post, and the insertion in the letter post of articles of which the importation and circulation is prohibited in the country of destination.  
The Convention stipulates that articles found in the mail in contravention of these provisions shall be dealt with according to the law of the country in which they are found.
- <sup>8</sup> *Cr. Code*, s. 160.
- <sup>9</sup> *Cr. Code*, s. 164.
- <sup>10</sup> *Cr. Code*, s. 162 (1)(a). See also s. 162 (1)(b).
- <sup>11</sup> *Cr. Code*, s. 163.
- <sup>12</sup> *Cr. Code*, s. 159 (2)(b).
- <sup>13</sup> *Customs Tariff*, R.S.C. 1970, c. C-41, Schedule C, Tariff Item 99201.
- <sup>14</sup> *Customs Act*, R.S.C. 1970, c. C-40, s. 205 (1).
- <sup>15</sup> *Customs Act*, R.S.C. 1970, c. C-40, s. 145.
- <sup>16</sup> *Canada Post Corporation Act*, S.C. 1980-81, c. 54, s. 40.
- <sup>17</sup> *Canada Post Corporation Act*, S.C. 1980-81, c. 54, s. 41.
- <sup>18</sup> *Broadcasting Act*, R.S.C. 1970, c. B-11.
- <sup>19</sup> See, for example, ss. 6 (1)(a), 6 (1)(c), and 6 (1)(f) of the *Radio (F.M.) Broadcasting Regulations*, chapter 380 of the Consolidated Regulations of Canada 1978; and ss. 6 (1)(a), 6 (1)(c), and 6 (1)(g) of the *Television Broadcasting Regulations*, Chapter 381 of the Consolidated Regulations of Canada, 1978.  
There appear to be no similar regulations with respect either to cable television or to pay television, at least as of April 1, 1983. On the issue of whether the Canadian Broadcasting Corporation enjoys Crown immunity from prosecution under the *Criminal Code* (particularly, under the *Code's* obscenity provisions) see *R. v. Canadian Broadcasting Corp.* (1981), 55 C.C.C. (2d) 444 (Ont. C.A.), leave to appeal to Supreme Court of Canada granted (Martland, Ritchie and McIntyre, J.J.) December 1, 1980.
- <sup>20</sup> See *Nova Scotia Board of Censors and A-G Nova Scotia v. McNeil*, [1978] 2 S.C.R. 662.
- <sup>21</sup> *Re Ontario Film and Video Appreciation Society v. Ontario Board of Censors*, not yet reported, March 25, 1983 (Ont. S.C.).
- <sup>22</sup> *Re Hamilton Independent Variety and Confectionary Stores Inc. v. City of Hamilton*, not yet reported, January 17, 1983 (Ont. C.A.).
- <sup>23</sup> City of Victoria By-Law 82-107.



## Chapter 48

# Law of Obscenity

Child pornography does not have a specific status in Canadian criminal law. Rather, the making, importation, distribution or sale of child pornography are dealt with under the more general provisions of the *Criminal Code* relating to obscenity and sexual offences, as well as under federal legislation relating to prohibited importations and the use of the mails. This chapter reviews the network of federal laws which regulates the different manifestations of child pornography.

In undertaking its review, the Committee assembled case studies from a number of sources; these are presented to illustrate the kinds of situations dealt with under the pertinent sections of the *Criminal Code* relating to obscenity. One of these sources was Project "P", jointly established by the Metropolitan Toronto Police Force and the Ontario Provincial Police.

### Section 159 of the *Criminal Code*

When considered in light of its extensive judicial interpretation, section 159 of the *Criminal Code* constitutes the major part of Canadian obscenity law. The section provides:

#### *Offences Tending to Corrupt Morals*

Corrupting morals — Idem — Defence of public good — Question of law and question of fact — Motives irrelevant — Ignorance of nature no defence — "Crime comic" — "Obscene".

159. (1) Every one commits an offence who

- (a) makes, prints, publishes, distributes, circulates, or has in his possession for the purpose of publication, distribution or circulation any obscene written matter, picture, model, phonograph record or other thing whatsoever, or
- (b) makes, prints, publishes, distributes, sells or has in his possession for the purpose of publication, distribution or circulation, a crime comic.

(2) Every one commits an offence who knowingly, without lawful justification or excuse,

- (a) sells, exposes to public view or has in his possession for such a purpose any obscene written matter, picture, model, phonograph record or other thing whatsoever,
- (b) publicly exhibits a disgusting object or an indecent show.
- (c) offers to sell, advertises, publishes an advertisement of, or has for sale or disposal any means, instructions, medicine, drug or article intended or represented as a method of causing abortion or miscarriage, or
- (d) advertises or publishes an advertisement of any means, instructions, medicine, drug or article intended or represented as a method of restoring sexual virility or curing venereal diseases or diseases of the generative organs.

(3) No person shall be convicted of an offence under this section if he establishes that the public good was served by the acts that are alleged to constitute the offence and that the acts alleged did not extend beyond what served the public good.

(4) For the purposes of this section it is a question of law whether an act served the public good and whether there is evidence that the act alleged went beyond what served the public good, but is a question of fact whether the acts did or did not extend beyond what served the public good.

(5) For the purposes of this section the motives of an accused are irrelevant.

(6) Where an accused is charged with an offence under subsection (1) the fact that the accused was ignorant of the nature or presence of the matter, picture, model, phonograph record, crime comic or other thing by means of or in relation to which the offence was committed is not a defence to the charge.

(7) In this section, "crime comic" means a magazine, periodical or book that exclusively or substantially comprises matter depicting pictorially

- (a) the commission of crimes, real or fictitious, or
- (b) events connected with the commission of crimes, real or fictitious, whether occurring before or after the commission of the crime.

(8) For the purposes of this Act, any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence, shall be deemed to be obscene.

Canadian courts have enunciated a number of legal principles applicable to the several offences outlined in sections 159(1) and 159(2), and to the definition of an "obscene publication" in section 159 (8). These general principles, developed and refined in court judgments over the years, serve to clarify and elaborate the provisions of section 159.

- In an obscenity prosecution under section 159, it is not the function of the court to determine whether publications alleged to be obscene hurt anyone, or cause any demonstrable harm. By enacting section 159 and related provisions, Parliament has already made that determination.<sup>1</sup>
- The definition in section 159(8) constitutes the sole test of obscenity with respect to "publications".<sup>2</sup>

- Before 1959, when section 159(8) was enacted, Canadian Courts, in the absence of a Canadian definition of obscenity, applied the test set out in the nineteenth-century English case, *R. v. Hicklin*, namely, “whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall.”<sup>3</sup>
- Further, a minority of the Supreme Court of Canada has held that section 159(8) should be regarded as prescribing an exhaustive test of obscenity where exploitation of sex is concerned, regardless of whether a “publication” is involved, and this has been taken up by other superior courts in Canada.<sup>4</sup>
- The obscenity provisions in the *Criminal Code* do not offend against the guarantees of freedom of speech and of the press in the *Canadian Bill of Rights*.<sup>5</sup> As one Canadian judge stated:<sup>6</sup>

“Freedom of speech in Canada is not unfettered. The *Canadian Bill of Rights* was intended to protect, and does protect, basic freedoms of vital importance to all Canadians. It does not serve as a shield behind which obscene matter may be disseminated without concern for criminal consequences. The interdiction of the publications which are the subject of the publications which are the subject of the present charges in no way trenches upon the freedom of expression which the *Canadian Bill of Rights* assures.”

- In cases close to the border line of the legal definition of obscenity, tolerance is to be preferred to proscription:<sup>7</sup>

“To strike at a publication which is not clearly obscene may have repercussions and implications beyond what is immediately visible. To suppress the bad is one thing; to suppress the not so bad, or even the possibly good, is quite another. Unless it is confined to clear cases, suppression may tend to inhibit those creative impulses and endeavours which ought to be encouraged in a free society.”

Section 159(8) of the *Criminal Code* provides that, “for the purposes of this Act, any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence, shall be deemed to be obscene.”

Although sections 159(1) and 159(2) refer to “any obscene written matter, picture, model, phonograph record or other thing whatsoever,” section 159(8) refers only to *publications*. Consequently, legal issues have arisen concerning what constitutes a “publication”, and whether the section 159(8) definition should be applied notwithstanding that the allegedly obscene matter is not a “publication”.<sup>8</sup>

Section 159(8) states only that *a* dominant characteristic, not *the* dominant characteristic, of the publication must involve an undue exploitation of sex. In determining whether the publication has such a “dominant characteristic”, consideration must be given to the work as a whole, not to isolated portions of it, and also to the expressed or implicit purpose of its author.<sup>9</sup>



The "undue exploitation" must relate at least partly to a sexual theme. Publications which patently exploit some combination of crime, horror, cruelty, or violence are proscribed only if they also exploit a sexual theme.

## Community Standard of Tolerance

Canadian courts have developed several general principles with respect to determining whether a dominant characteristic of a publication is the undue exploitation of sex, or of sex and crime, horror, cruelty or violence, and whether the contents of a publication exceed the Canadian community standard of tolerance. The phrase "undue exploitation of sex . . ." does not refer to the profit-making purpose, or otherwise, of the publication. Rather, it refers to the publication's undue exploitation of a sexual theme.<sup>10</sup> In determining whether a publication is characterized by an undue exploitation of sex, the legal test to be applied is whether the standard of tolerance in the contemporary Canadian community has been exceeded.<sup>11</sup> The standard of tolerance is not synonymous with the moral standards of the community.<sup>12</sup> An assessment of what the community is prepared to tolerate *others* to read is the key determination.

It is a national standard of community tolerance, not a local one, which must be determined in relation to the content of the allegedly obscene publication:<sup>13</sup>

"(Community) standards are not set by those of lowest taste or interest. Nor are they set exclusively by those of rigid, austere, conservative, or puritan taste and habit of mind. Something approaching a general average of community thinking and feeling has to be discovered. Obviously, this is no easy task, for we are seeking a quantity that is elusive. Yet the effort must be made if we are to have a fair objective standard in relation to which a publication can be tested as to whether it is obscene or not. The alternative would mean a subjective approach, with the result dependent upon and varying with the personal tastes and predilections of the particular judge who happens to be trying the case."<sup>14</sup>

What the community is prepared to tolerate is influenced by the manner and circumstances of the distribution of the impugned publication:<sup>15</sup>

There are some publications which are so blatantly indecent that they would not be tolerable by the Canadian community under any circumstances. Some pictures are offensive to the majority of people to the point that the Canadian community would not tolerate them on a billboard, or on the cover of a magazine, or on a television screen where persons of all ages and sensibilities would be exposed to them, but would be prepared to tolerate them being viewed by persons who wished to view them. Some pictures would not be acceptable by Canadian community standards in a children's bedtime story-book or primer but would be in a magazine for general distribution. The Canadian community might be prepared to tolerate the exhibition of a motion picture to an adult audience, but would consider the exhibition of the same motion picture to a general audience, which included children, to be an undue exploitation of sex. Similarly, the general distribution of certain magazines to a neighbourhood store accessible to all ages would not be tolerable, whereas the distribution of such magazines to "adult" bookstores to which

children under a certain age were not admitted might not be objectionable. The packaging and pricing of a publication may also be relevant in considering whether Canadian community standards have been exceeded. The distribution of magazines in plastic covers marked "adult" in some respects might act as an attraction rather than a deterrent unless the price was high enough to place it beyond the reach of most children.

Community tolerance must be assessed in relation to the nature and circumstances of the offence with which the accused is charged. For example, where an accused widely distributes sexually explicit publications and is charged with "distributing" under section 159(1)(a), the proper test of "undue-ness" is whether the contemporary Canadian community would tolerate the distribution of the magazines in question to stores which made them available to the general public. In such a case, it is the community's standard of tolerance for publications given general distribution that has to be determined:<sup>16</sup>

This standard is not one based solely on the fact that publications will be available to children, nor on the fact that they will be available to persons of advanced years who have led a sheltered life, or, on the other hand, to persons who are broad-minded and permissive. It is the standard of tolerance based on the fact that the publication will be available to the general public which includes all of those groups. It is not proper to speak of the Canadian community standard in isolation. It must be considered in relation to the manner and circumstances of distribution.

Where the charge is distributing obscene publications and involves distribution by a wholesaler to a retailer, the manner and circumstances of display of the publications are not a relevant factor, since display is for the retailer to determine.<sup>17</sup> Where, however, a retailer is charged under section 159(2)(a), the manner and circumstances of display of the impugned publications would be relevant considerations.

Some material, such as explicit pornography involving young persons, should be deemed obscene regardless of the circumstances of its distribution. As one court noted:<sup>18</sup>

"In my view, what is contained in these pictures goes beyond what the Canadian community is prepared to tolerate, even in the relatively liberal atmosphere of contemporary times. One need only refer, as a particular example, to the pictures depicting teenage boys engaged in fellatio and in sado-masochistic roles replete with the hardware of sexual deviance such as handcuffs, whips, chains, etc. It is obvious from even a cursory viewing that the pictures and slides seized by the police and entered as exhibits to this trial have, as their dominant characteristic, either sex or a combination of sex and cruelty or sex and violence, and that a dominant characteristic of the nearly six thousand such pictures of this nature is the undue exploitation of these factors."

In determining whether a publication exceeds the Canadian community standard of tolerance, reference may be made to whether the depiction involves behaviours which are sexual offences (for example, gross indecency) under the *Criminal Code*. Analogies to the criminal law of sexual offences are relevant but not conclusive to a determination of obscenity.<sup>19</sup>

## Undue Exploitation of Sex

Community tolerance of the printed word should be deemed to be greater than community tolerance of pictorial representations.<sup>20</sup> Where a publication is intended to be a unified artistic whole (for example, a novel or a film, as opposed to, say, a magazine), it must be looked at in its entirety in determining whether it is obscene. The work should not be condemned as obscenity merely by reference to its sexual episodes or to its occasional gross and earthy language. Both the episodes portrayed and the language used must be assessed in the context of, and in their relationship to, the entire work.<sup>21</sup>

In *R. v. Brodie*, an obscenity case which concerned D.H. Lawrence's novel, *Lady Chatterley's Lover*. Mr. Justice Judson (whose opinion was concurred in by a majority of the Supreme Court of Canada) stated:<sup>22</sup>

"Such an enquiry necessarily involves a reading of the whole book with the passages and words to which objection is taken read in the context of the whole book. Of that now there can be no doubt. No reader can find a dominant characteristic on a consideration of isolated passages and isolated words. Under this definition the book now must be taken as a whole. It is not the particular passages and words in a certain context that are before the Court for judgment, but the book as a complete work. The question is whether the book as a whole is obscene, not whether certain passages and certain words, part of a larger work, are obscene."

With respect to films, many factors must be considered in determining whether the film is obscene within the meaning of section 159(8):<sup>23</sup>

"The author's artistic purpose; the manner in which he has portrayed and developed the story; his depiction and interplay of character; his creation of visual effects by way of skilful cinematography, and so forth. It is in relation to all of these that the sexual episodes must be scrutinized. The important question is: Do the sexual episodes play a legitimate role in the film, measured by the internal necessities of the film itself?"

Other factors taken into account in determining whether a film exceeds community standards of tolerance are: expert evidence of the film's artistic merit; whether the film has a restricted classification and therefore will not be exposed to young persons; and the treatment of the film by provincial film classification boards.<sup>24</sup>

In considering the question of the "undue exploitation of sex" in an obscenity prosecution, a magazine must be judged differently from a novel. In the latter case, passages which deal in explicit terms with sex must be judged against the entire work and in the context of the novel's theme. On the other hand, a magazine typically has no "theme", in the literary sense. Accordingly, each page must be looked at more or less in isolation from the others, for it is rare that a reader will start at the beginning of the magazine and read through to the end.<sup>25</sup> As one Canadian judge put it, "offensive passages or pictorial presentations in a magazine cannot be saved merely by surrounding them with profound articles on foreign policy".<sup>26</sup>



## Admissibility of Expert Evidence

An expert is one who by study or experience has become specially skilled and competent to express an opinion on a scientific or artistic subject.<sup>27</sup> Expert testimony concerning the standard of contemporary Canadian tolerance, or concerning the artistic or literary merits of an impugned publication, is not only admissible but desirable.<sup>28</sup> However, the Crown is not required to adduce evidence concerning the prevailing community standard of tolerance.<sup>29</sup>

In an obscenity trial, it is proper to admit into evidence the opinions of suitably qualified experts concerning the standards of tolerance in contemporary Canada. Public opinion surveys may also be admitted, provided that such evidence is admitted through those who are expert in the field of opinion research, and that approved statistical methods, social science research techniques, and interview procedures have been employed. Essential to the admissibility of this kind of evidence, however, is that the witness testifying be possessed of expert knowledge and that the segment of society whose characteristics are relevant to the question being studied has been properly selected. In obscenity cases, the community whose standards are being considered comprises all of Canada and the sample should therefore be nationally representative and should not be drawn from a single city. The sample being polled must be such that the opinions solicited constitute a prototype of opinions held across Canada.<sup>30</sup>

Although expert evidence concerning community standards or concerning a publication's artistic or literary merit is admissible in an obscenity trial, it is not necessarily conclusive. Expert evidence will be weighted according to its perceived cogency. Further, a court is not bound to adopt even the views of an expert standing uncontradicted; expert evidence may be rejected in its entirety.<sup>31</sup>

## Making, Distribution and Sale of Obscene Matter

Several distinctions should be noted concerning the different offences outlined in sections 159(1)(a) and 159(2)(a) of the *Criminal Code*. Section 159(1)(a) makes it an offence to make, print, publish, distribute, circulate or to have in possession for the purpose of publication, distribution or circulation, any obscene written matter, picture, model, phonograph record, or other thing whatsoever. These offences are directed primarily, though not exclusively, at the maker, publisher or wholesaler of obscene materials. For purposes charged under this section, ignorance of the nature or presence of the impugned material is not a defence.<sup>32</sup> The law deems them to know the nature of the commodities which they either bring into existence or distribute commercially.

On the other hand, section 159(2)(a) makes it an offence for any person who *knowingly, without lawful justification or excuse*, sells, exposes to public view, or has in his possession for such a purpose any obscene written matter,

picture, model, phonograph record, or other thing whatsoever.<sup>33</sup> These offences are directed primarily at retailers, who constitute the last link in the chain of commercial distribution. A retailer who sells a large selection of magazines, for example, may not be aware of the content of each magazine he or she sells. Accordingly, the section 159(1)(a) offence may only successfully be charged where knowledge on the seller's part is proved.

The following legal principles have been enunciated with respect to the different offences in section 159;

- Where an accused is charged with making an obscene photograph under section 159(1)(a), the Crown is not required to prove that the accused published, distributed or circulated the photograph, or that he intended to publish, distribute or circulate the photograph. The word 'makes' in section 159(1)(a) is very broad, and encompasses a single act of creation.<sup>34</sup>
- Further, where an accused is charged with making an obscene photograph under section 159(1)(a), that the photograph was intended solely for private use and was not circulated is a relevant consideration in determining whether the Canadian community would tolerate its making. In *Re Hawkshaw and The Queen*,<sup>35</sup> Chief Justice Howland of the Ontario Court of Appeal stated:<sup>36</sup>

"The fact that the picture was intended solely for private viewing and was not intended to, and did not come into anyone's hands, other than those of the person who took the picture and the commercial establishment which developed it, may be very relevant in considering what the Canadian community would tolerate. A sketch or a model which is the product of the author's imagination and is only intended to be viewed privately might not be found by the trial judge to constitute an undue exploitation of sex. On the other hand, he might be driven to conclude that the community would not tolerate, even for private viewing, a photograph depicting the commission of an act of gross indecency where one of the participants is a minor. In short, publication is not a prerequisite to a determination that a picture is obscene, but it is a relevant circumstance to be weighed in making this determination."

- The private and non-commercial showing of an obscene film to friends does not constitute "publication or circulation" within the meaning of section 159(1)(a) and is not a criminal offence.<sup>37</sup>
- If a person has in his possession obscene matter for the purpose of distribution, it does not matter whether the means of distribution be sale, consignment for sale, free distribution or otherwise. "Distribution" in section 159(1) includes all means of distribution.<sup>38</sup>
- The word "distributes" in section 159(1) is not limited to the commercial connotation of distribution by a wholesaler to a retailer. Rather, the word "distributes" is broad in its meaning and clearly applies to the act of a wholesaler in allocating and delivering magazines to retail stores.
- However, the act of distribution in such circumstances is complete upon delivery to the retail stores. Accordingly, on the question of whether the publications are obscene, the manner and circumstances of distribution

are relevant considerations, but the manner of display and sale by the retailers is not. The wholesaler typically has no control over the mode or manner of display of the magazines in such stores.<sup>39</sup>

- “Distribution” and “sale” are not synonymous terms. By differentiating between the activities respectively outlined in sections 159(1)(a) and 159(2)(a), Parliament drew a line through the chain from production to consumption at a point immediately preceding those who sell to the ultimate consumer. Accordingly, evidence of possession for *sale*, when unsupported by other evidence, is not evidence of possession for *distribution*. Parliament has made it clear that knowledge must be proved against the person who sells to the ultimate consumer. A sales clerk who sells arguably obscene materials cannot be said to be a “distributor” of them.<sup>40</sup>
- The renting out of obscene movies in the form of video cassettes constitutes distribution or circulation of them within the meaning of section 159(1) (a), notwithstanding that the cassettes would be used only in the home or at small parties.<sup>41</sup>
- With respect to the offences outlined in section 159(2)(a), the word “knowingly” does not require that the accused possess the legal knowledge of whether something is legally obscene. It is sufficient to prove that he had knowledge of its subject matter.<sup>42</sup> For example, where films are shown in the back of a bookstore, amid signs reading “Restricted to persons over 18”; where another film shown in the establishment had earlier resulted in a charge; and where the film in question had been approved for restricted viewing by the provincial theatres branch only after being edited, these factors indicate sufficient knowledge. In such circumstances, even if there is no actual knowledge, the doctrine of wilful blindness will operate.<sup>43</sup>
- The mere fact that a provincial theatres branch has approved a film does not constitute “lawful justification or excuse” under section 159(2)(a). The provincial board’s approval does not imply that the film is not obscene, but is merely evidence which the court may consider on the issue of obscenity.<sup>44</sup>

In each of the following case studies, the accused pleaded guilty. The studies are of interest not because they elucidate important legal doctrines, but rather because they illustrate the kinds of situations in which section 159(1) has been called upon to counteract involving the making, distribution and sale of obscene matter.

### *Case Study 1*

In 1980, Project “P” was notified by a commercial film processing laboratory that, on three occasions, the accused had left film for processing at one of its outlets; these films yielded photographs of a male masturbating, ejaculating and urinating.

In his dealings with the film laboratory, the accused used an assumed name, but was identified by the licence number of his vehicle which one of the laboratory’s employees jotted down and reported to Project “P”. The accused, a male in his early forties, lived in a large Ontario town and had been on probation since being convicted in 1979 of performing an indecent act (exposing himself in a public place). The accused’s probation officer



indicated that the accused had only been to a psychiatric clinic twice since his conviction, and hence was in violation of a condition of his probation stipulating that he seek psychiatric care.

When interviewed, the accused admitted taking the photographs. A search of his car revealed numerous pornographic photographs, penis rings, a penis vibrator, lotions and women's underwear. These items were seized.

It was decided to charge the accused with breach of probation and with making obscene pictures, and to seek the extension of his probation period in order to gain some means of ensuring that he received psychiatric treatment. The accused pleaded guilty to both charges in Provincial Court. For making obscene pictures, he received two years on probation with the condition that he resume his psychiatric treatment; for his breach of the terms of his probation, the accused was fined \$300.

### *Case Study 2*

In 1978 and 1979, Revenue Canada Customs and Excise sought to eliminate from the Canadian market a line of pocketbooks produced by a United States publisher. The pocketbooks contained no photographs or illustrations, but included written descriptions of acts of pedophilia, bestiality, bondage, whipping, buggery, incest and homosexuality. In 36 seizures conducted across Canada, about 750,000 copies of these books were seized.

The Canadian representative of the United States publisher (the first accused) retained the second accused, president of a Canadian printing firm (the corporate accused), to produce copies of the books in Canada. These domestic editions would not be subject to seizure by Customs.

The second accused received individual copies of the books to be reprinted. These copies were brought into Canada by means of falsified importation documents: when the books were submitted to Canada Customs by the United States publisher, slightly altered versions of their titles were recorded on the importation papers. Thus, the recorded titles did not appear on Revenue Canada's computerized listing of prohibited materials and the books were admitted into the country.

The corporate accused printed over 100,000 volumes comprising some 20 titles. The Canadian copies were identical to their United States counterparts, except that the corporate accused was listed as the publisher.

In 1979, searches were carried out at the premises of the corporate accused and the first accused, by R.C.M.P. Customs and Excise officers and by Project "P". The first, second and corporate accused were charged with making an obscene publication. A Justice of the Peace ordered that the seized books be retained pursuant to section 446(1) of the *Code*.

In Provincial Court, the corporate accused pleaded guilty and was fined \$5,000 with distress (the estimated amount of profit from the unlawful venture). The charges against the other two accused were withdrawn. All seized documents were ordered returned to the accused after the expiry of the appeal period; the court also ordered the forfeiture to the Crown of all of the obscene books.

### *Case Study 3*

In 1980, the police force of an Ontario city requested the assistance of Project "P", in conducting a search of the business premises of a magazine and paperback book distributor. The distributor, subsequently the corporate accused, had come to the attention of the local police when they had seized

plastic-wrapped magazines and paperback books from a variety store. These publications appeared to be obscene. An invoice indicated that the corporate accused had distributed the impugned material to the store. The premises of the corporate accused were searched, and a large number of pornographic magazines were seized, along with documentation of their purchase, sale and distribution in Ontario. The corporation, and the individual who controlled it, were each charged with distributing obscene matter and possession of obscene matter for purposes of distribution. The Crown proceeded by way of summary conviction, and apparently withdrew both charges against the accused individual, and the "possession" charge against the company; the corporate accused pleaded guilty to the "distributing" charge and was fined \$500.

The magazines originally seized from the variety store were returned to the retailer because they were deemed by police not to fall within the section 159(8) definition of obscenity. The books were returned because they contained no photographs and hence would also be excessively difficult to prove obscene.

It was learned that the distributor had sent a document to the variety store proprietor; in this document, the distributor purportedly undertook to assume full responsibility "for any legal actions pertaining to censorship, providing that such actions be initiated summarily against a publication or publications handled exclusively by [the distributor]." The document further provides that the distributor's agreement to assume legal responsibility would be nullified if the retailer caused an adult publication to come into the possession of a minor. Finally, the document states that the distributor "has the right to retain legal counsel of their own choice, as well as the right of plea."

#### *Case Study 4*

In 1978, Project "P" was notified by the Post Office that an advertisement in the September issue of *Hustler* magazine offered sexually explicit slides and motion pictures, to be ordered by writing to a post office box in an Ontario city. The accused, who had placed the advertisement, had conducted a similar mail order operation in 1977, but at that time had only been selling non-obscene slides copied from the photographs in popular adult magazines.

Two months later, Project "P" learned of a new advertisement placed by the accused, this time in a photography magazine. The accused sought to exchange nude photographs with readers and listed a new post office box number.

Project "P" ordered material from the accused's first post office box and received rolls of exposed black and white film. When processed, the film yielded photographs explicitly depicting sex acts between males and females. The pictures had been rephotographed from "hard core" magazines.

In searching the accused's residence, police found and seized photographs, letters, invoices and photographic equipment. A search of the first post office box revealed cheques and orders for sexually explicit photographs and magazines.

The accused was charged with possession of obscene publications for purposes of distribution and with distributing obscene publications; ultimately, the latter charge was withdrawn. Upon pleading guilty to the remaining charge in Provincial Court, the accused was fined \$1000 (or three months' imprisonment), an amount agreed to by the Crown and the defence. The judge, however, stated that he would have been prepared to impose a \$3000 fine to express his concern over the mail-order distribution of obscene pictures, a marketing practice that gave children access to such matter.

## Approval by Customs or Provincial Theatres Branches

That Customs Department officials allow certain materials into the country does not afford a defence for an accused charged with an obscenity offence in relation to those materials. The legal test for obscenity is not the same as the test for prohibited entry under the *Customs Tariff*. Moreover, in an obscenity prosecution under the *Criminal Code*, it is for the Court, and not for the Customs Department, to determine whether a publication is obscene. The determination of obscenity is essentially a matter of opinion, and if customs officials express an opinion that a matter is not obscene, it remains just an opinion and no more.<sup>45</sup>

Similarly, that a film has been approved by a provincial theatres branch does not afford a defence to an accused who is charged with an obscenity offence in relation to that film, nor does it constitute "lawful justification or excuse" within the meaning of section 159(2)(a).<sup>46</sup> The provincial board's approval does not imply that the film is not obscene (since provincial boards use tests different from that outlined in section 159(8) of the *Criminal Code*), but is merely evidence which the court may consider on the issue of obscenity.<sup>47</sup>

### Case Study 5

In 1981, R.C.M.P. Customs and Excise officers entered the accused's Toronto residence under the authority of a writ of assistance. The accused, a 40 year-old male, owned an unincorporated magazine distributorship which he operated out of the basement of his home. The R.C.M.P. officers were investigating a report that magazines and books prohibited under the *Customs Tariff Act* had been smuggled into Canada by the accused's firm and were being kept in his home for purposes of distribution. Upon conducting their search, the officers found that the material in question had cleared Customs; the accused was able to produce a Customs importation authorization (form B-3) issued him with respect to the books and magazines.

When consulted, Project "P" reported that the material should not have been admitted into Canada, and was allowed in only because the Toronto Customs Office had cleared it without checking with the Prohibited Importations Section in Ottawa, or examining the bi-weekly list of prohibited publications.

After being contacted by the R.C.M.P., Project "P" seized 600 magazines and 100 pocketbooks from the accused, and charged him with three counts of keeping obscene material for the purpose of distribution.

Among the pocketbooks seized were titles such as "Confessions of a Good Wife" and "Daughter-Loving Daddies"; the subject matter of these books included the sexual exploits of a 15 year-old girl, and the sexual relationship of a man and sheep. The magazines were of the "glossy" variety, had list prices of as much as \$8.95 apiece, and had been plastic-wrapped by the accused. The magazines that were seized had titles such as "250 Baby Dolls" and "Hot Box". All of the books and magazines had affixed price stickers, and thus appeared to be ready for distribution.

At trial before judge and jury in the Provincial Court, the accused, representing himself, pleaded not guilty to the three counts against him. The trial judge instructed the jury that they were free to find some, all or none of the seized material obscene. After deliberating for six hours, the jury found all of



the books and magazines obscene and found the accused guilty on all three counts. The judge fined the accused \$700 for each count, or upon failure to pay within eight months, six months' imprisonment for each count.

### Case Study 6

In 1976, Project "P" conducted a search of the premises of a periodical distributing company headquartered in a small Ontario city. Various publications and documents were seized. The company supplied magazines (including *Hustler*) and paperback books imported from the United Kingdom and the United States to local distributors. Project "P" laid charges of distributing obscene publications against the company and its manager with respect to 13 magazine titles distributed nationally by them.

The March, 1976 issue of *Hustler* magazine contained photographs of the following:

- A scene of bestiality in which a dog mounts a nude woman from the rear;
- Three mice crawling about a woman's genital area;
- The after-effects of anal sex (i.e., excrement covering the man's penis and the woman's buttocks);
- A "diarrhoea dinner" (i.e., fried human excrement served on a dinner plate in preparation for consumption);
- A woman in the course of having her pubic hair shaved (a series of photographs);
- A woman with a cigarette in her vagina.

In Provincial Court, the accused company pleaded guilty to seven counts of distributing obscene magazines and was fined \$35,000. The charge against the company's manager was dismissed, as the Crown chose not to introduce evidence against him.

In 1976, two local distribution companies and their managers were charged with conspiracy to distribute 13 obscene publications. These two companies (apparently) had been supplied with the publications in question by the national distributor discussed above. In 1977, the accused companies appeared in Provincial Court and pleaded guilty to all charges against them. The first of the companies was fined \$25,000 or distress, while the second received a fine of \$75,000 or distress. Both accused admitted failing to examine the publications at the time that they distributed them; both also admitted that the magazines exceeded community standards of tolerance, but argued that these standards were difficult for them to discern in the absence of specific legislation or official guidelines.

## The "Public Good" Defence

With respect to the "public good" defence in sections 159(3) and 159(4), the accused carries the burden of establishing that his or her acts served the "public good". Where, for example, expert evidence indicates that the qualities of an obscene book would be appreciated only by the sophisticated reader, and that restricted distribution of the book to a group capable of deriving some advantage from it was neither claimed nor proved by the accused, the defence of "public good" is not made out.<sup>48</sup>

## Child Pornography and the Law of Obscenity

The making, distribution and sale of child pornography in Canada are dealt with primarily under the general "obscurity" provisions in section 159 of the *Criminal Code*. Prosecutions in which child pornography has in some way been a feature fall into two broad groups: cases in which a Canadian child or children have been used in the making of pornography; and cases in which publications containing explicit written or visual representations of young persons in sexual contexts have been charged as obscene.

The examples in the first category given in Chapter 52, *Production and Distribution of Child Pornography*, constitute the most illustrative Canadian legal cases in which a person was prosecuted for making child pornography. They illustrate both the variety of contexts in which this phenomenon occurs, and the various legal principles which apply, depending on which criminal offence is charged against the accused. The examples in the second category constitute the most illustrative Canadian legal cases in which a person or corporation was prosecuted, not for making pornography involving Canadian children, but for possessing child pornography for the purpose of distribution. These examples also serve to illustrate the different factual contexts and legal principles which apply to the distribution or intended distribution of foreign-made child pornography.

## Seizure of Obscene Publications

While section 159 of the *Criminal Code* sets out various obscenity offences for which the accused is liable to conviction and punishment, section 160 specifically mandates a procedure for seizing obscene publications. It provides:

160.(1) A judge who is satisfied by information upon oath that there are reasonable grounds for believing that any publication, copies of which are kept for sale or distribution in premises within the jurisdiction of the court, is obscene or a crime comic, shall issue a warrant under his hand authorizing seizure of the copies.

(2) Within seven days of the issue of the warrant, the judge shall issue a summons to the occupier of the premises requiring him to appear before the court and show cause why the matter seized should not be forfeited to Her Majesty.

(3) The owner and the author of the matter seized and alleged to be obscene or a crime comic may appear and be represented in the proceedings in order to oppose the making of an order for the forfeiture of the said matter.

(4) If the court is satisfied that the publication is obscene or a crime comic, it shall make an order declaring the matter forfeited to Her Majesty in right of the province in which the proceedings take place, for disposal as the Attorney General may direct.

(5) If the court is not satisfied that the publication is obscene or a crime comic, it shall order that the matter be restored to the person from whom it was seized forthwith after the time for final appeal has expired.

(6) An appeal lies from an order made under subsection (4) or (5) by any person who appeared in the proceedings

- (a) on any ground of appeal that involves a question of law alone.
- (b) on any ground of appeal that involves a question of fact alone, or
- (c) on any ground of appeal that involves a question of mixed law and fact.

as if it were an appeal against conviction or against a judgment or verdict of acquittal, as the case may be, on a question of law alone under Part XVIII and sections 601 and 624 apply *mutatis mutandis*.

(7) Where an order has been made under this section by a judge in a province with respect to one or more copies of a publication, no proceedings shall be instituted or continued in that province under section 159 with respect to those or other copies of the same publication without the consent of the Attorney General.

(8) In this section “court” means

- (a) In the Province of Quebec, the provincial court, the court of the sessions of the peace, the municipal court of Montreal and the municipal court of Quebec; (a.1) in the Provinces of New Brunswick, Alberta and Saskatchewan, the Court of Queen’s Bench;
- (b) in the Province of Prince Edward Island, the Supreme Court; or
- (c) in any other province, a county or district court;

“crime comic” has the same meaning as it has in section 159; “judge” means a judge of a court.

The section only applies where a publication, copies of which are kept for sale or distribution in premises within the jurisdiction of the court, is found to be obscene within the section 159(8) definition. Accordingly, forfeiture of these copies will only be ordered after the Crown has proven beyond reasonable doubt that the publication is obscene and that copies of it are being kept for sale or distribution in premises within the jurisdiction of the court.<sup>49</sup>

Notwithstanding section 160(2), the onus of proving the above matters on a section 160 forfeiture application is on the Crown.<sup>50</sup> On a section 160 forfeiture application, the warrant of seizure must describe the publications in such a way that the police officers executing it are aware of the particular publications to be seized. Description of the publication by publisher is sufficient, but the warrant of seizure cannot be “open-ended”<sup>51</sup>. Where the Crown does not adduce evidence on a section 160 forfeiture application and does not place any of the seized material before the Court, there is no legal basis for the judge to make an order of forfeiture, and any order so made must be quashed and the seized material returned to its owner.<sup>52</sup>

Since proof that the publications are kept for sale or distribution is required in order for the court to make an order of forfeiture under section



160, it is proper for the court to inquire into how the proposed sale or distribution is to be made. Where there are no restrictions concerning how the publication is to be sold, and where it is intended to be for general sale, then the proper question on the issue of obscenity is: Would the contemporary Canadian community tolerate the sale or distribution of the publication to stores which made them available to any member of the public?<sup>53</sup> Applications under section 160 are in the nature of *in rem* proceedings against the publications themselves. Neither the occupier of the premises nor the author or publisher of the publication is convicted of an offence.<sup>54</sup>

## Use of the Mails

Section 164 of the *Criminal Code* provides:

164. Every one commits an offence who makes use of the mails for the purpose of transmitting or delivering anything that is obscene, indecent, immoral or scurrilous, but this section does not apply to a person who makes use of the mails, for the purpose of transmitting or delivering anything mentioned in subsection 162(4).

The most recent reported prosecution under this section<sup>55</sup> involved an issue of the newspaper, "The Body Politic". The newspaper is mailed to subscribers, and the December, 1977 issue contained an article entitled, "Men Loving Boys Loving Men". The apparently fictional protagonists in the article are homosexual pedophiles who participate in acts of buggery and oral sex with young boys. The article extols the joys of a homosexual-pedophilic lifestyle and concludes with the comment that adult males so-inclined "deserve our praise, our admiration and our support".

The corporate accused (Pink Triangle Press) and three of its officers were acquitted at trial on the section 164 charges.<sup>56</sup> On appeal to the County Court, the acquittal was set aside and a new trial ordered, on the basis of the trial Judge's several errors of law.<sup>57</sup> The accused appealed against this ruling to the Ontario Court of Appeal.<sup>58</sup>

In dismissing the accused's appeal, the Court clarified the legal principles applicable to the section 164 offence:

From its plain words, section 164 applies to everyone, and publishers of subscription newspapers are not excepted.

Although the words "immoral" and "indecent" in section 164 are vague, it is through the use of such words in the law that the values of the community find expression in the courtroom. The Court should construe these terms in the context of Canadian community standards of tolerance.

Whether a matter is "immoral or indecent" within the meaning of section 164 is to be determined by whether the Canadian community standard of tolerance has been exceeded in the particular circumstances. Further, where the publication in question is a newspaper, which has no theme, an offensive passage will not be redeemed by the context of the rest of the newspaper. The

offensive passage must be looked at more or less in isolation from the rest of the publication.

In addition to the offence set out in section 164 of the *Criminal Code*, the *Canada Post Corporation Act*<sup>59</sup> contains provisions regulating the use of the mails. By section 39(2) of that Act, the Canada Post Corporation is authorized to open any undeliverable mail, including undeliverable letters. "Undeliverable mail" and "undeliverable letter"<sup>60</sup> include among other things, any mail or letter the delivery of which is prohibited by law, for example, mail or letters contravening section 164 of the *Criminal Code*.

Sections 40(1) and 40(2) of the *Canada Post Corporation Act* provide:

40. (1) All mail from a country other than Canada containing or suspected to contain anything subject to customs or tolls or anything the importation of which is prohibited shall be submitted to a customs officer for examination.

(2) A customs officer may open any mail other than letters, submitted to him under this section and may

- (a) cause letters to be opened in his presence by the addressee thereof; or
- (b) at the option of the addressee, open letters himself with the written permission of the addressee thereof;

and where the addressee of any letter cannot be found or where he refuses to open the letter, the customs officer shall return the letter to the Corporation and it shall be dealt with as undeliverable mail in accordance with the regulations.

These provisions authorize a customs officer to examine any mail (other than letters) suspected to be prohibited entry into Canada and also provides for the examination of letters sought to be mailed into Canada. The law relating to prohibited importations is discussed in Chapter 51.

The *Canada Post Corporation Act* provides for "prohibitory orders" to be issued. A prohibitory order is an official sanction which forbids the delivery of mail to or posted by certain persons. Section 41(1) of the Act provides:

41. (1) Where the Minister believes on reasonable grounds that any person

- (a) is, by means of mail,
  - (i) committing or attempting to commit an offence, or
  - (ii) aiding, abetting, counselling or procuring any other person to commit an offence,
- (b) with intent to commit an offence, is using mail to accomplish his object, or
- (c) is, by means other than mail, aiding, abetting, counselling or procuring any other person to commit an offence by means of mail,

the Minister may make an order (in this section called an "interim prohibitory order") prohibiting the delivery, without the consent of the Minister, of mail addressed to or posted by that person (in this section called the "person affected").

Sections 41(2) through 41(15) outline the procedure for appealing from an interim prohibitory order; the powers, duties, and composition of the Board of Review; the effect of prohibitory orders; and the conditions under which an order may be revoked or reinstated. Section 41(14) specifies that:

- ... while an interim or final prohibitory order is in effect, the Minister may
- (a) detain or return to the sender any mail addressed to, or anything posted by, the person affected; and
  - (b) declare any mail detained pursuant to this section to be undeliverable mail, and any mail so declared shall be dealt with in accordance with the regulations.

The term “offence” used in section 41(1) of the *Canada Post Corporation Act* includes the attempted importation of “immoral or indecent” matter under the *Customs Tariff Act*.<sup>61</sup> A summary of the customs-related offences in the *Customs Tariff* and the *Customs Act*<sup>62</sup> is provided in Chapter 51.

## Summary

1. Section 159(1)(9) of the *Criminal Code* makes it an offence to make, print, publish, distribute, circulate, or to have in one’s possession for the purpose of publication, distribution, or circulation, any obscene written matter, picture, model, phonograph record, or other thing whatsoever. That the accused was ignorant of the nature or presence of the allegedly obscene matter is not a defence to a charge under this section.
2. Section 159(2)(9) of the *Criminal Code* provides that everyone, who knowingly, without lawful justification or excuse, sells, exposes to public view, or has in his possession for such a purpose any obscene written matter, picture, model, phonograph record, or other thing whatsoever.
3. The *Criminal Code* provides the following definition of an obscene publication, namely, any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty, and violence.
4. In determining whether a publication has such a “dominant characteristic”, regard must be had to the work as a whole, and to the expressed or implicit purpose of its author.
5. The phrase “undue exploitation of sex . . . ” does not refer to the profit-making purpose, or otherwise, of its author. Rather, it refers to the publication’s undue exploitation of a sexual theme.
6. The “undue exploitation” must relate at least partly to a sexual theme. Publications which patently exploit some combination of crime, horror, cruelty, or violence are proscribed only if they also exploit a sexual theme.
7. In determining whether a publication is obscene in that it is characterized by an undue exploitation of sex, the legal test to be applied is whether the standard of tolerance in the contemporary Canadian community has been



exceeded. The standard of tolerance is not synonymous with the moral standards of the community. An assessment of what the community is prepared to tolerate others to read is the key determination.

8. It is a national standard of community tolerance, not a local one, which must be determined in relation to the allegedly obscene publication.
9. Where a publication is intended to be a unified artistic whole (for example, a novel or a film as opposed to, say, a magazine), it must be looked at in its entirety in determining whether it is obscene. The work should not be condemned as obscenity merely by reference to its sexual episodes or to its occasional gross and earthy language. Both the episodes portrayed and the language used must be assessed in the context of, and in their relationship to, the entire work.
10. In the context of an obscenity prosecution, a magazine must be judged differently from a novel. In the latter case, passages which deal in explicit terms with sex must be judged against the entire work, and in the context of the novel's theme. On the other hand, a magazine typically has no "theme" in the literary sense.
11. Expert testimony concerning the standard of contemporary Canadian tolerance, or concerning the artistic or literary merits of an impugned publication, is advisable, provided that such testimony is given by a person who, by study or experience, is specially qualified and competent to express an opinion on the issue in question.
12. The Crown is not required to adduce evidence concerning the prevailing community standard of tolerance in Canada.
13. That Customs officials allow certain materials into the country, or that a film has been approved by a provincial theatres branch, does not afford a defence to a person who is charged with an obscenity offence in relation to those materials or to that film. In an obscenity prosecution under the *Criminal Code*, it is for the Court, and not for the Customs Department or a provincial theatres branch, to determine whether a publication is obscene. The test used in determining obscenity under the *Criminal Code* is not the same as those employed by the Customs Department or by provincial theatres branches.

## References

### Chapter 48: Law of Obscenity

- <sup>1</sup> *R. v. Prairie Schooner News Ltd. and Powers* (1970), 1 C.C.C. (2d) 251 (Man. C.A.).
- <sup>2</sup> *Dechow v. The Queen* (1977), 35 C.C.C. (2d) 22 (S.C.C.).
- <sup>3</sup> *R. v. Hicklin* (1868), L.R. 3 Q.B. 360.
- <sup>4</sup> *Dechow v. The Queen*, *supra*, note 2; *Re Hawkshaw and The Queen* (1982), 69 C.C.C. (2d) 503 (Ont. C.A.), leave to appeal to Supreme Court of Canada granted (Laskin C.J.C., McIntyre and Wilson, J.J.) November 1, 1982. According to the Registrar of the Supreme Court of Canada, this case will be argued sometime in 1983-84 judicial term.
- <sup>5</sup> *R. v. Prairie Schooner News Ltd. and Powers*, *supra*, note 1.
- <sup>6</sup> *R. v. Prairie Schooner News Ltd. and Powers*, *ibid.*, at 271, *per* Dickson J.A.  
Whether the obscenity provisions in the *Criminal Code* contravene the *Canadian Charter of Rights and Freedoms* has yet to be judicially determined.
- <sup>7</sup> *R. v. Dominion News and Gifts Ltd.* (1963), 40 C.R. 109 at 127 *per* Freedman J.A. (Man. C.A.), *aff'd* *Dominion News and Gifts Ltd. v. The Queen* (1964), 42 C.R. 209 (S.C.C.).
- <sup>8</sup> See, for example, *Dechow v. The Queen*, *supra*, note 2; and *R. v. McCormick*, unreported, January 10, 1980 (Ont. Co. Ct.).
- <sup>9</sup> *R. v. Times Square Cinema Ltd.* (1971), 4 C.C.C. (2d) 229 (Ont. C.A.); *R. v. The MacMillan Company of Canada* (1976), 31 C.C.C. (2d) 286 (Ont. Co. Ct.).
- <sup>10</sup> *R. v. Prairie Schooner News Ltd. and Powers*, *supra*, note 1.
- <sup>11</sup> *R. v. Sudbury News Service Ltd.* (1978), 39 C.C.C. (2d) 1 (Ont. C.A.) *R. v. Penthouse International Ltd.* (1979), 46 C.C.C. (2d) 111 (Ont. C.A.).
- <sup>12</sup> *R. v. Penthouse International Ltd. et al.*, *ibid.*
- <sup>13</sup> *R. v. Kiverago* (1973), 11 C.C.C. (2d) 463 (Ont. C.A.).
- <sup>14</sup> *R. v. Dominion News and Gifts*, *supra*, note 7 at 126 *per* Freedman J.A.
- <sup>15</sup> *R. v. Sudbury News Service Ltd.* (1978), 18 O.R. (2d) 428 at 435 *per* Howland C.J.O. (Ont. C.A.).
- <sup>16</sup> *R. v. Sudbury News Service Ltd.*, *ibid.*, at 438-39 *per* Howland C.J.O.
- <sup>17</sup> *R. v. Sudbury News Service Ltd.*, *ibid.*
- <sup>18</sup> *R. v. McCormick*, *supra*, note 8 at 23 *per* Ferguson Co. Ct. J.
- <sup>19</sup> *R. v. MacMillan Co. of Canada*, *supra*, note 9; *R. v. Goldberg and Reitman* (1971), 4 C.C.C. (2d) 187 (Ont. C.A.).
- <sup>20</sup> *R. v. Prairie Schooner News Ltd. and Powers*, *supra*, note 1.
- <sup>21</sup> *R. v. Odeon Morton Theatres Ltd. and United Artists Corp.* (1974), 16 C.C.C. (2d) 185 (Man. C.A.).
- <sup>22</sup> *R. v. Brodie* (1962), 132 C.C.C. 161 at 179 (S.C.C.).
- <sup>23</sup> *R. v. Odeon Morton Theatres Ltd. and United Artists Corp.*, *supra*, note 21 at 194 *per* Freedman C.J.M.
- <sup>24</sup> *R. v. Odeon Morton Theatres Ltd. and United Artists Corp.*, *ibid.*; *R. v. Goldberg and Reitman*, *supra*, note 19.
- <sup>25</sup> *R. v. Penthouse International Ltd. et al.*, *supra*, note 11.
- <sup>26</sup> *R. v. Penthouse International Ltd. et al.*, *ibid.*, at 117 *per* Weatherston J.A.
- <sup>27</sup> *R. v. Prairie Schooner News Ltd. and Powers*, *supra*, note 1.

- <sup>28</sup> *R. v. Prairie Schooner News Ltd. and Powers*, *ibid.*, But cf. *R. v. Penthouse International Ltd.*, *supra*, note 11, esp. at 117.
- <sup>29</sup> *R. v. Cameron*, [1966] 4 C.C.C. 273 (Ont. C.A.); *R. v. Ariadne Developments Ltd.* (1974), 19 C.C.C. (2d) 48 (N.S.C.A.).
- <sup>30</sup> *R. v. Prairie Schooner News Ltd. and Powers*, *supra*, note 1.
- <sup>31</sup> *R. v. Prairie Schooner News Ltd. and Powers*, *ibid.*
- <sup>32</sup> *Cr. Code*, s. 159 (6).
- <sup>33</sup> Emphasis added.
- <sup>34</sup> *Re Hawkshaw and The Queen*, *supra*, note 4.
- <sup>35</sup> *Ibid.*
- <sup>36</sup> *Ibid.*, at 516.
- <sup>37</sup> *R. v. Rioux*, [1970] 3 C.C.C. 149 (S.C.C.); *R. v. Leong* (1961), 37 C.R. 317 (B.C.S.C.).
- <sup>38</sup> *R. v. National News Co.*(1952), 16 C.R. 369 (Ont. C.A.).
- <sup>39</sup> *R. v. Sudbury News Service Ltd.*, *supra*, note 15.
- <sup>40</sup> *R. v. Dorosz* (1971), 14 C.R.N.S. 357 (Ont. C.A.). See generally *Fraser v. The Queen*, [1967] 2 C.C.C. 42 (S.C.C.).
- <sup>41</sup> *R. v. Video Movieshop* (1982), 67 C.C.C. (2d) 87 (Nfld. S.C.).
- <sup>42</sup> *R. v. Cameron*, *supra*, note 29. See also *R. v. McFall* (1975), 26 C.C.C. (2d) 181 (B.C.C.A.).
- <sup>43</sup> *R. v. McFall*, *ibid.*
- <sup>44</sup> *R. v. McFall*, *ibid.*
- <sup>45</sup> *R. v. Prairie Schooner News Ltd. and Powers*, *supra*, note 1; *R. v. 294555 Ontario Ltd.* (1978), 39 C.C.C. (2d) 352 (Ont. C.A.).
- <sup>46</sup> *R. v. McFall*, *supra*, note 42; *R. v. Daylight Theatre Co.* (1973), 13 C.C.C. (2d) 524 (Sask. C.A.).
- <sup>47</sup> *R. v. McFall*, *ibid.*
- <sup>48</sup> *R. v. Delorme* (1973), 15 C.C.C. (2d) 350 (Que. C.A.).
- <sup>49</sup> *R. v. Penthouse International Ltd.*, *supra*, note 11; *R. v. Mid-Western News Agency Ltd.* (1965), 47 C.R. 227 (Sask. Dist. Ct.).
- <sup>50</sup> *R. v. H.H. Marshall Ltd.* (1982), 69 C.C.C. (2d) 197 (N.S.C.A.).
- <sup>51</sup> *Re Laborde and The Queen* (1972), 7 C.C.C. (2d) 86 (Sask. Q.B.).
- <sup>52</sup> *R. v. H.H. Marshall Ltd.*, *supra*, note 50.
- <sup>53</sup> *R. v. Penthouse International Ltd.*, *supra*, note 11.
- <sup>54</sup> Mewett and Manning, *Criminal Law* (Toronto: Butterworths, 1978) at 447.
- <sup>55</sup> In *R. v. Lambert* (1965), 47 C.R. 12 (B.C.C.A.), it was held that the section 164 offence is not limited to publications. Accordingly, the section applies to a mailed letter containing obscene matter, even though the letter's contents were intended to be kept private. But see *R. v. Goyer* (1916), 27 C.C.C. 10 (Sask. C.A.).
- <sup>56</sup> *R. v. Pink Triangle Press* (1979), 45 C.C.C. (2d) 385 (Ont. Prov. Ct.).
- <sup>57</sup> *R. v. Pink Triangle Press* (1980), 51 C.C.C. (2d) 485 (Ont. Co. Ct.).
- <sup>58</sup> *Popert v. The Queen* (1981), 19 C.R. (3d) 393 (Ont. C.A.).
- <sup>59</sup> *Canada Post Corporation Act*, S.C. 1980-81, c. 54.
- <sup>60</sup> *Canada Post Corporation Act*, S.C. 1980-81, c. 54, s. 2(1).
- <sup>61</sup> *Customs Tariff*, R.S.C. 1970, c. C-41, Schedule C, Tariff Item 99201.
- <sup>62</sup> *Customs Act*, R.S.C. 1970, c. C-40, s. 205 (1).





## Chapter 49

# Provincial and Municipal Regulation

Although the question of access by children and youths to pornographic material is (apart from the national role of Canadian Radio-television and Telecommunications Commission in regulating the content of radio, television, cable television and pay television) mainly a matter within provincial jurisdiction, it is closely bound up with the federal law of prohibited importations and obscenity. A sexually explicit film or magazine may be prohibited entry into Canada as being “immoral or indecent” under the *Customs Tariff*, thereby pre-empting *provincial* regulation of that film or magazine. The federal law of obscenity operates notwithstanding provincial theatres branch rulings; an obscenity charge may be laid against a film being publicly exhibited with the prior knowledge and concurrence of a provincial theatres branch.

With respect to the access by young persons to pornographic magazines, the relationship between federal and provincial law is also pertinent. If a sexually explicit publication imported into Canada is deemed neither to be “immoral or indecent” under the *Customs Tariff* nor “obscene” under the *Criminal Code*, it may legally be distributed and sold throughout Canada, notwithstanding that its content may make it inappropriate for the perusal of young persons. In response to this situation, some Canadian municipalities have, under provincial enabling legislation, enacted by-laws designed to prevent such publications from being readily accessible to minors.

In this chapter, provincial and municipal initiatives are reviewed concerning the regulation of sexually explicit films and magazines.

## Publicly Exhibited Films

Eight provinces have enacted legislation to regulate the public exhibition of films. These provinces are: Nova Scotia, New Brunswick, Quebec, Ontario, Manitoba, Saskatchewan, Alberta and British Columbia. Although Newfoundland has passed legislation which provides for the establishment of a film censorship board,<sup>1</sup> this board has yet to be established. Currently, both Newfoundland and Prince Edward Island adopt the rulings of the New Brunswick board.

More informal film classification procedures have been adopted in the Yukon and the Northwest Territories. In the Northwest Territories, two film classification officers stationed in Yellowknife are responsible for ensuring that all films exhibited have been approved by a provincial classification board. Their current practice is to adopt the rulings of the Alberta board. If controversy precedes the arrival of a certain film, the officers examine how the eight provincial boards have treated the film, and tend to adopt the approach taken by a majority of them. In such cases, the officer may request a pre-screening of the film. Films not yet reviewed by the provincial boards are rejected. The film classification officers also have the authority to seize films under a Yellowknife ordinance. To date, no obscenity charges under the *Criminal Code* have been laid in the Northwest Territories in connection with the exhibition of a film.

In the Yukon, there is no official responsible for screening, classifying or censoring films. According to information received by the Committee, theatre owners act upon the classifications sent by the distributors with every film. These classifications are identical to those used by the British Columbia board.

Table 49.1 provides a summary of the legal mandate, nature, policy and practice of each of the eight provincial boards. This information has been drawn from several sources, including: provincial enabling legislation and regulations; annual reports and other literature published by the boards; and direct communication with board officials. Information gained directly from the respective boards is listed under the following headings: adult policy, child policy, complaints, community involvement, police policy and treatment of three specific films.

*Adult Policy.* The board's policy concerning the depiction of sexual and violent themes involving adults; the types of scenes that the board would eliminate; and the treatment of the balance of the film, where such cuts are made.

*Child Policy.* The board's policy concerning the depiction of sexual and violent themes involving children; the types of scenes that would cause the board to edit or ban the film; any differences between this policy and that pertaining to sexual or violent depictions involving adults.

*Complaints.* The number of formal or informal complaints or inquiries received by the board concerning films being exhibited and special classifications. In some cases, the boards gave the precise number of complaints received over a certain span of time, while in other instances they were only able to provide estimates of the frequency of complaints received.

*Community Involvement.* The activities in which the board and its members participate in order to gauge, and remain responsive to, community standards.

*Police Policy.* Based on statements by the boards and law enforcement agencies, the policies of law enforcement agencies within the province concerning the laying of charges for violations of laws governing the exhibition of films.

*Treatment of Three Specific Films.* Information obtained concerning the responses of the eight boards to three films: *Caligula*, *Pretty Baby* and *Beau Pèrè*.



**Table 49.1**

**Provincial Regulation and Classification of Films**

Province/ Name of Board	Source of Board's Legal Authorization
<p><i>New Brunswick</i></p> <p>New Brunswick Film Classification Board</p>	<p><i>Theatres, Cinématographs and Amusements Act</i>, R.S.N.B. 1973, c. T-5, as amended by S.N.B. 1977, c. M-11.1; S.N.B. 1978, c. D-11.2; S.N.B. 1979, c. 41, S.N.B. 1979, c. 71, S.N.B. 1980, c. 32.</p> <p>S.O.R. 1963, as amended by N.B. Reg. 64-32, 65-59, 67-123, 68-90, 69-92, 71-67, 75-100, 75-130, 79-100, 82-39, 82-153.</p>
<p><i>Nova Scotia</i></p> <p>Amusement Regulations Board</p>	<p><i>The Theatres and Amusements Act</i>, R.S.N.S. 1967, c. 304. As amended by S.N.S. 1972. c.54.</p> <p>N.S. Reg. 97/78 as amended by N.S. Reg. 36/81; N.S. Reg. 96/81; N.S. Reg. 130/82; N.S. Reg. 16/83; N.S. Reg. 48/83.</p>
<p><i>Quebec</i></p> <p>Bureau de Surveillance du Cinéma</p>	<p><i>An Act Respecting the Cinéma</i>, R.S.Q. 1977, c. C-18 Consolidating the following: S.R. 1964, c. 55, as amended by S.Q. 1967 c. 17, S.Q. 1967 c. 22., S.Q. 1969, c. 26, S.Q. 1975, c. 14, O.C. 4130-75 of 17.09. 75, (1975) 107 G.O. II, 5127.</p>
<p><i>Ontario</i></p> <p>Ontario Board of Censors</p>	<p><i>The Theatres Act</i>, R.S.O. 1980, c. 498.</p> <p>Reg. 931, R.R.O. 1980 as amended by O. Reg. 138/81, O. Reg. 438/81; O. Reg. 600/81; O. Reg. 29/82.</p>
<p><i>Manitoba</i></p> <p>Manitoba Film Classification Board</p>	<p><i>The Amusements Act</i>, R.S.M. 1970, c. A70, as amended by S.M. 1979, c. 28.</p> <p>M.R. 49/75, as amended by M.R. 103/76; M.R. 65/78; M.R. 2/79; M.R. 115/80; M.R. 111/82.</p>
<p><i>Saskatchewan</i></p> <p>Saskatchewan Film Classification Board</p>	<p><i>The Theatres and Cinématographs Act</i>, R.S.S. 1978, c. T-11. S. Reg. 1 (O.C. 1873/81).</p>
<p><i>Alberta</i></p> <p>Alberta Motion Picture Censor Board</p>	<p><i>Amusements Act</i>, R.S.A. 1980, c. A-41.</p> <p><i>Amusements Act</i> General Regulations, Alta. Reg. 72/57 as amended by Alta. Reg. 261/82; Alta. Reg. 8/83.</p>
<p><i>British Columbia</i></p> <p>British Columbia Film Classification Branch</p>	<p><i>Motion Picture Act</i>, R.S.B.C. 1979, c. 284, as amended by S.B.C. 1981, c. 20; ss. 48-9.</p> <p>B.C. Reg. 221/70, as amended by B.C. Reg. 92/79; B.C. Reg. 358/79; B.C. Reg. 459/81.</p>

**Table 49.1 (Continued)**  
**Provincial Regulation and Classification of Films**

Province/ Name of Board	Government Branch
<i>New Brunswick</i>  New Brunswick Film Classification Board	Department of Youth, Recreation and Cultural Resources
<i>Nova Scotia</i>  Amusement Regulations Board	Department of Consumer Affairs
<i>Quebec</i>  Bureau de Surveillance du Cinéma	Ministry of Cultural Affairs (Ministère des Affaires Culturelles)
<i>Ontario</i>  Ontario Board of Censors	Department of Consumer and Commercial Relations
<i>Manitoba</i>  Manitoba Film Classification Board	Department of Tourism, Recreation and Cultural Affairs
<i>Saskatchewan</i>  Saskatchewan Film Classification Board	Saskatchewan Consumer and Commercial Affairs
<i>Alberta</i>  Alberta Motion Picture Censor Board	Alberta Culture, Division of Cultural Development
<i>British Columbia</i>  British Columbia Film Classification Branch	Ministry of the Attorney General

**Table 49.1 (Continued)**

**Provincial Regulation and Classification of Films**

Province/ Name of Board	Structure of Board
<i>New Brunswick</i>  New Brunswick Film Classification Board	Three or more persons including a chairman. (At present, there are six part-time members).
<i>Nova Scotia</i>  Amusement Regulations Board	Chairman and nine part-time members.
<i>Quebec</i>  Bureau de Surveillance du Cinéma	Director and other members appointed by the Lieutenant-Governor.
<i>Ontario</i>  Ontario Board of Censors	Director serving as Chairman, an Assistant Director serving as Vice-Chairman and such other persons as the Lieutenant Governor in Council appoints. At present, there are 30 members serving on a part-time basis. At least five members must be present in order to classify a film.
<i>Manitoba</i>  Manitoba Film Classification Board	Up to 15 part-time members, including a chairman and vice-chairman. Each film is viewed by three members who vote on its classification.
<i>Saskatchewan</i>  Saskatchewan Film Classification Board	Director (Chairman of the Board) and between one and four other members (at present there are two other members).
<i>Alberta</i>  Alberta Motion Picture Censor Board	Chairman and four members. Majority rule.
<i>British Columbia</i>  British Colombia Film Classification Branch	Film classification director and two other appointed employees designated as film classifiers. Majority rule.



**Table 49.1 (Continued)**

**Provincial Regulation and Classification of Films**

<b>Province/ Name of Board</b>	<b>Functions of Board</b>
<i>New Brunswick</i>  New Brunswick Film Classification Board	Classify or prohibit films. Can request cuts, preferring the distributor to make them.
<i>Nova Scotia</i>  Amusement Regulations Board	Classifies or prohibits. Does not cut. Requires the distributor to make cuts.
<i>Quebec</i>  Bureau de Surveillance du Cinéma	Classify or prohibit films. Can request cuts, making the distributor to make cuts. Has the power to refuse to grant a visa of approval.
<i>Ontario</i>  Ontario Board of Censors	Has the power to reject any film, to censor any film and when authorized by the person who submitted the film, to edit any portion of the film that it does not approve for exhibition. Board prefers the distributor to make cuts. Board also classifies all the films submitted to it.
<i>Manitoba</i>  Manitoba Film Classification Board	Pure classification. The board does not edit or reject films. Also, under the Act, if deemed desirable, the Lieutenant Governor in Council may co-operate with the governments of other provinces in Canada in appointing joint film classification board. (As yet no such initiative has been taken.)
<i>Saskatchewan</i>  Saskatchewan Film Classification Board	Has the power to reject films, and to remove any portion of a film that it does not approve for exhibition. Classifies films. Board prefers to recommend cuts to the distributor.
<i>Alberta</i>  Alberta Motion Picture Censor Board	Has the power to reject films and to eliminate any subtitles, words or scenes that it considers objectionable before approving the film. Board also classifies films. Rejected films may be re-submitted after a period of no less than six months.
<i>British Columbia</i>  British Columbia Film Classification Branch	Has the power to reject films, to make approval contingent upon the cutting of the film by the person who submitted it, and to classify films. Board also will make cuts requested by the distributor.

**Table 49.1 (Continued)**  
**Provincial Regulation and Classification of Films**

Province/ Name of Board	Adult Policy
<i>New Brunswick</i>  New Brunswick Film Classification Board	Will not allow scenes of penetration, ejaculation or excessive sex and violence. The British version of <i>Caligula</i> was shown with no cuts requested.
<i>Nova Scotia</i>  Amusement Regulations Board	Will not allow scenes of penetration, ejaculation, or excessive sex and violence. Refused to license the version of <i>Caligula</i> altered for Ontario.
<i>Quebec</i>  Bureau de Surveillance du Cinéma	No written policy formula has been adopted, in view of Quebec's "constantly changing pluralistic society"; however, the Board is guided by two general principles: (i) judgment is not passed on films according to their themes, but upon the manner in which they are treated, on both the psychological level; and (ii) the goals of protecting minors and maintaining freedom of choice for persons 18 years of age and older. <i>Caligula</i> (American version) shown with cuts.
<i>Ontario</i>  Ontario Board of Censors	Will not allow: explicit portrayal of sexual activity; undue and prolonged scenes of violence, torture, blood-letting; ill-treatment of animals; undue or prolonged emphasis on genitalia; sexual exploitation of children. British version of <i>Caligula</i> shown with cuts.
<i>Manitoba</i>  Manitoba Film Classification Board	Permit issued by Board is not a licence to show the film in Manitoba. Police can and have charged films shown with a licence. Film will be classified as "Restricted Adult" if it contains depictions of any of the following: oral sex; fellatio; buggery; cunnilingus; penetration; bestiality; masturbation; ejaculation; actual portrayal of child pornography; graphic portrayal of genital close-ups; extreme acts of violence with sexual activity. British version of <i>Caligula</i> approved and shown.
<i>Saskatchewan</i>  Saskatchewan Film Classification Board	The Board views scenes in the context of the whole film. Penetration, ejaculation and long scenes depicting sexual acts are cut. British version of <i>Caligula</i> shown in Saskatchewan.
<i>Alberta</i>  Alberta Motion Picture Censor Board	The Board does not cut films. Will not allow scenes of penetration, ejaculation and violence. The British version of <i>Caligula</i> was shown. Police charged movie <i>Caligula</i> .
<i>British Columbia</i>  British Columbia Film Classification Branch	Does not allow scenes of penetration, ejaculation, intercourse and violence. American version of <i>Caligula</i> approved and shown.

**Table 49.1 (Continued)**

**Provincial Regulation and Classification of Films**

Province/ Name of Board	Child Policy
<p><i>New Brunswick</i></p> <p>New Brunswick Film Classification Board</p>	<p>In determining what movies should be classified, rejected or cut, the same standards apply for adults and children when involved in sex scenes. If a movie were to be submitted with more explicit scenes involving children, Board Policy would be reviewed. Adults can take youth to restricted movie. <i>Pretty Baby</i> and <i>Tin Drum</i> passed and shown in New Brunswick.</p>
<p><i>Nova Scotia</i></p> <p>Amusement Regulations Board</p>	<p>The Board will not pass films that physically or sexually exploit children. <i>Pretty Baby</i> and <i>Tin Drum</i> approved.</p>
<p><i>Quebec</i></p> <p>Bureau de Surveillance du Cinéma</p>	<p>The general goal of the Board is to reconcile the objectives of protecting minors and of allowing freedom of choice for adults. <i>Pretty Baby</i> and <i>Beau Père</i> approved and shown.</p>
<p><i>Ontario</i></p> <p>Ontario Board of Censors</p>	<p>Rejects anything that sexually exploits children in any manner. Cuts or banning of films are made on the basis of Board policy. Under the Act, no person apparently under 12 years of age not accompanied by a person apparently 16 years or more of age shall be permitted to purchase a ticket of admission or be granted admission to an exhibition of moving pictures in a theatre: (a) after 7:30 p.m. on any day; (b) during the school term of public and secondary schools in the municipality in which the theatre is situated, except — (i) during school holidays between the hours of 9:00 a.m. and 7:30 p.m., and (ii) during any other day during the term between the hours of 3:30 p.m. and 7:30 p.m. <i>Pretty Baby</i> and <i>Beau Père</i> banned. Cuts to <i>Tin Drum</i> and then played.</p>



**Table 49.1 (Continued)**

**Provincial Regulation and Classification of Films**

Province/ Name of Board	Child Policy
<p><i>Manitoba</i></p> <p>Manitoba Film Classification Board</p>	<p>Films showing excessive sex and violence are limited to persons 18 and over. Films portraying children under 15 in sexual situations are classified as adult parental guidance. Films portraying minors in sexually explicit scenes are classified as restricted adult. <i>Pretty Baby</i>, <i>Blue Lagoon</i> and <i>Beau Père</i> have been shown in Manitoba.</p>
<p><i>Saskatchewan</i></p> <p>Saskatchewan Film Classification Board</p>	<p>Criteria same for adults and children when children are subject matter of film. <i>Pretty Baby</i> rejected in 1978. This ruling was appealed and upheld. As a result, the current Board was set up. Categories to be clearly displayed at theatres. <i>Beau Père</i> submitted and approved in 1982.</p>
<p><i>Alberta</i></p> <p>Alberta Motion Picture Censor Board</p>	<p><i>Pretty Baby</i> shown. <i>Beau Père</i> passed but not shown.</p>
<p><i>British Columbia</i></p> <p>British Columbia Film Classification Branch</p>	<p>Seeks to protect children by ensuring theatres have signs posted clearly indicating classification of film being shown. Under restricted category, children can enter with a parent. <i>Beau Père</i> and <i>Pretty Baby</i> passed and shown.</p>

**Table 49.1 (Continued)**

**Provincial Regulation and Classification of Films**

Province/ Name of Board	Film Classification/Categories
<i>New Brunswick</i>  New Brunswick Film Classification Board	<i>General:</i> Suitable for all ages. <i>Adult:</i> Suitable for adults 16 and over. Not theatres' responsibility to keep children out. <i>Restricted:</i> To 18 years and over; adults can take youths in. Adult means parent or legal guardian.
<i>Nova Scotia</i>  Amusement Regulations Board	<i>General:</i> Admission to all persons. <i>Adult:</i> Those 14 years and older admitted. Under 14 must be accompanied by an adult. <i>Restricted:</i> No one under 18 admitted.
<i>Quebec</i>  Bureau de Surveillance du Cinéma	<i>A: Film pour Tous</i> — viewers of all ages admitted. <i>B: Film Pour Adolescents et Adultes</i> — only viewers at least 14 years of age admitted. <i>C: Film Réservé aux Adultes</i> — only viewers at least 18 years of age admitted.
<i>Ontario</i>  Ontario Board of Censors	<i>Family viewing</i> , all ages. <i>Parental guidance advised.</i> <i>Adult accompaniment required</i> for age of 14 restricted to 14 and over unless accompanied by adult. <i>Restricted</i> — no one under 18 admitted.
<i>Manitoba</i>  Manitoba Film Classification Board	<i>General:</i> Family viewing, all ages. <i>Mature:</i> Parental discretion, all ages. <i>Mature:</i> Suitable for family viewing. <i>Mature:</i> Not suitable for children. <i>Adult:</i> Parental guidance parent must accompany children. <i>Restricted:</i> no one under 18 admitted.
<i>Saskatchewan</i>  Saskatchewan Film Classification Board	<i>General:</i> No age restrictions. <i>Adult:</i> Parental guidance advised. <i>Restricted Adult:</i> No child under 18 admitted, unless accompanied by a parent. <i>Special X:</i> No one under 18 admitted.
<i>Alberta</i>  Alberta Motion Picture Censor Board	<i>General:</i> No age restrictions. <i>Parental Guidance:</i> Parental guidance advised, no age restrictions. <i>Mature:</i> Under 14 must be accompanied by adult. <i>Restricted Adult:</i> No one under 18 admitted.
<i>British Columbia</i>  British Columbia Film Classification Branch	<i>General:</i> No age restrictions. <i>Mature:</i> Parental guidance advised. <i>Restricted:</i> No person under 18 admitted unless accompanied by a parent or responsible adult. Theatre must display sign indicating content of film.

**Table 49.1 (Continued)**

**Provincial Regulation and Classification of Films**

Province/ Name of Board	Appeal Procedure
<p><i>New Brunswick</i></p> <p>New Brunswick Film Classification Board</p>	<p>No statutory authorization.</p>
<p><i>Nova Scotia</i></p> <p>Amusement Regulations Board</p>	<p>No statutory authorization.</p>
<p><i>Quebec</i></p> <p>Bureau de Surveillance du Cinéma</p>	<p>Every person who has submitted a film to the Board may, if not satisfied with the decision rendered, appeal therefrom to the Board sitting in review. Appeals are initiated by means of a registered letter addressed to the chairman. The Board will then examine the film and arrive at the final decision.</p>
<p><i>Ontario</i></p> <p>Ontario Board of Censors</p>	<p>Appeal procedure is set by the Board rather than by statute or regulation. Distributors objecting to the Board's recommendation may make submissions in writing to the Board within 15 days of mailing or delivery of the Board's report. Such submissions will include the preferred classification or treatment of the film together with reasons for the submission. The Board will review any such submission forthwith considering the reasons set out by the distributor. The Board or any member may view (or review) the film. The Board may request a meeting with the distributor to discuss his submission. A decision will be rendered within 10 working days after the receipt of a submission. The Board's Office Manager will advise the distributor of the Board's decision and reasons (including any minority view).</p>



**Table 49.1 (Continued)****Provincial Regulation and Classification of Films**

<b>Province/ Name of Board</b>	<b>Appeal Procedure</b>
<i>Manitoba</i>  Manitoba Film Classification Board	The Minister may appoint an appeal board consisting of at least five persons. The Minister is also empowered to co-operate with the governments of other provinces of Canada in appointing a joint appeal board consisting of not more than 10 persons nominated by the Minister and by the other governments represented on the joint film classification board.
<i>Saskatchewan</i>  Saskatchewan Film Classification Board	Appointed committee hears all appeals. Its decisions are final.
<i>Alberta</i>  Alberta Motion Picture Censor Board	Appeal board consists of three appointed persons. Appeals are made within 30 days of Censor Board's decision to condemn the film. Appeals must be made in writing, must state the reason for appealing, and must contain a declaration that the film has not been altered since it was received back from the Board of Censors.
<i>British Columbia</i>  British Columbia Film Classification Branch	Appeal board consists of a chairman and two other persons appointed by the Lieutenant Governor (Act section 3(1)). Every person who appeals to the appeal board shall file with the Director a notice of appeal in the form prescribed by the Director, and shall pay the prescribed fee. The appeal board's decision and order is final and binding on the Director and every other person affected by it.

**Table 49.1 (Continued)**

**Provincial Regulation and Classification of Films**

Province/ Name of Board	Regulation of Advertising
<p><i>New Brunswick</i></p> <p>New Brunswick Film Classification Board</p>	<p>A theatre owner must display at the entrance to the theatre a sign at least 8" x 12" indicating the classification of the film to be exhibited. If films of more than one classification are to be exhibited, the classification with the more mature age requirement must be displayed. A theatre owner shall clearly indicate in the advertisement the film's classification.</p>
<p><i>Nova Scotia</i></p> <p>Amusement Regulations Board</p>	<p>No statutory authorization.</p>
<p><i>Quebec</i></p> <p>Bureau de Surveillance du Cinéma</p>	<p>No pictorial or cinematographic film shall be the subject of an advertisement in a newspaper, as defined in <i>The Press Act</i>, in which an advertisement cut, drawing or engraving is used, unless such cut, drawing or engraving be part of a poster or of a film previously approved by the Board.</p> <p>Every person who wishes to use a poster (as defined by regulation) for advertising a pictorial or cinematographic film performance, is required to submit the same for the approval of the Board, before the poster may be loaned, rented or transmitted to be exhibited. The class of spectators determined in the visa issued by the Director must be posted in a conspicuous place at the entrance to every moving picture or drive-in theatre where the film is exhibited. When films with different classifications are shown at the same performance only the most restrictive classification may be posted.</p>
<p><i>Ontario</i></p> <p>Ontario Board of Censors</p>	<p>All advertising matter in connection with a film classified by the Board as adult or restricted entertainment shall indicate that the film is so classified. Appointed inspectors under the authority of the Director have the power to seize, remove and hold any advertising that they believe on reasonable and probable grounds was exhibited or was or is used contrary to the Act. The Board has the power to approve, prohibit or regulate advertising in Ontario in connection with any film or the exhibition thereof. No person shall use or display any advertising matter in connection with any film or the exhibition thereof unless a sample of the advertising has been submitted to and approved by the Board. Theatres exhibiting "restricted" or "adult" entertainment films must have signs of prescribed size and shape hung under their canopies to specify the classification of the film. Advertising shall also indicate any other information that the Board requires.</p>

**Table 49.1 (Continued)**

**Provincial Regulation and Classification of Films**

Province/ Name of Board	Regulation of Advertising
<p><i>Manitoba</i></p> <p>Manitoba Film Classification Board</p>	<p>The Board is empowered to control and regulate advertising of films and slides intended to be classified for exhibition. The Board, or any peace officer or inspector, may order the removal from all public places of any advertisement relating to any film or slide if the advertisement is of an immoral, obscene or indecent nature or depicts any murder, robbery, criminal assault or the killing of any person.</p> <p>All advertising instructions as to film classification and content initiated by the Board shall be carried out by the persons to whom the instructions are issued. Theatres must clearly and prominently display a notice in the form and of a size approved by the Board showing the classification of the film being exhibited. The classification must also be displayed in any newspaper or other advertising medium used to advertise the film.</p>
<p><i>Saskatchewan</i></p> <p>Saskatchewan Film Classification Board</p>	<p>The Board may require a person to submit to it any poster, lithograph or other advertisements depicting scenes from, and intended to be used or displayed in connection with a film to be exhibited in Saskatchewan; and the Board may prohibit the use or further use of any such posters, lithographs or advertisements that it considers unfit for public exhibition or display.</p> <p>No person shall insert or cause to be inserted in a newspaper or other periodical an advertisement describing or in any way dealing with a film, that:</p> <ul style="list-style-type: none"> <li>(a) gives details of a criminal action or depicts criminals as admirable or heroic characters;</li> <li>(b) is immoral or obscene or suggests lewdness or indecency;</li> <li>(c) offers evil suggestions to the minds of persons or children; or</li> <li>(d) is for any other reason injurious to public morals or opposed to the public welfare.</li> </ul> <p>The Board may require any person to submit before publication, for its approval or rejection, the proofs or proposed advertisements.</p> <p>The Board shall determine whether the public should be warned of potentially offensive scenes, language or violence contained in any film. No film that has been classified may be publicly exhibited unless:</p>



**Table 49.1 (Continued)**

**Provincial Regulation and Classification of Films**

Province/ Name of Board	Regulation of Advertising
Saskatchewan Film Classification Board— ( <i>Cont'd</i> )	<p>(a) all graphic or written advertisement for the film distributed or posted after the date of classification include the correct classification and any warnings; and</p> <p>(b) the classification and any warnings are displayed in a part of the theatre so as to be readily seen by the public before paying admission.</p>
<p><i>Alberta</i></p> <p>Alberta Motion Picture Censor Board</p>	<p>When so requested, a film exchange shall submit to the Board of Censors all advertising material of a particular feature picture for approval or otherwise.</p> <p>The Board of Censors has the power to examine all posters, heralds, hand-bills, cuts, newspaper and periodical advertising matter in connection with films and film displays, and approve or disapprove of same.</p> <p>Any person using or displaying any advertising matter after it has been condemned or disapproved of by the Censor Board, shall be liable on summary conviction to a fine of not less than \$25 and not more than \$200, with costs. Advertising must prominently display the film's classification, and any other comments the Board considers advisable.</p>
<p><i>British Columbia</i></p> <p>British Columbia Film Classification Branch</p>	<p>Director may approve, prohibit or regulate advertising. No person shall use or display advertising matter in connection with a film or its exhibition unless a sample of the advertising matter is first approved by the Director.</p> <p>The Director may require, as a condition of approval of the advertising matter that it contain words describing the classification of the film together with other comments the Director considers advisable.</p> <p>All advertising matter in connection with a film shall be submitted to the Director before the film is exhibited.</p> <p>The advertising of "Mature" films must convey the words "Adult Entertainment" in all media of communication used for advertising.</p> <p>Advertising of all "restricted" films must display the province's "Restricted" symbol and the words "No Admittance to Persons Under Eighteen". In radio advertising for such pictures, the words "Restricted Admission" must be clearly spoken.</p> <p>Before approving any advertising in connection with a film, the Director may order that a warning caption be displayed in all advertising and thereupon the words supplied by the Director shall be used in all such advertising.</p>

**Table 49.1 (Continued)**

**Provincial Regulation and Classification of Films**

Province/ Name of Board	Regulation of Film Trailers
<p><i>New Brunswick</i></p> <p>New Brunswick Film Classification Board</p>	<p>Any film determined by the Board to be a trailer shall only be exhibited in the following manner:</p> <ul style="list-style-type: none"> <li>• trailers classified by the Board as restricted entertainment shall only be exhibited with films classified as restricted entertainment;</li> <li>• trailers classified by the Board as adult entertainment shall only be exhibited with films classified as adult or restricted entertainment;</li> <li>• trailers classified by the Board as general entertainment may be exhibited with any film approved by the Board.</li> </ul>
<p><i>Nova Scotia</i></p> <p>Amusement Regulations Board</p>	<p>No statutory authorization.</p>
<p><i>Quebec</i></p> <p>Bureau de Surveillance du Cinéma</p>	<p>The Bureau examines and classifies trailers.</p>
<p><i>Ontario</i></p> <p>Ontario Board of Censors</p>	<p>The Board screens trailers.</p>
<p><i>Manitoba</i></p> <p>Manitoba Film Classification Board</p>	<p>No statutory authorization.</p>
<p><i>Saskatchewan</i></p> <p>Saskatchewan Film Classification Board</p>	<p>In practice, the Board recommends editing of unsuitable trailers.</p>
<p><i>Alberta</i></p> <p>Alberta Motion Picture Censor Board</p>	<p>No statutory authorization.</p>
<p><i>British Columbia</i></p> <p>British Columbia Film Classification Branch</p>	<p>The Director shall supply a "restricted film strip" for each trailer (and print) of a film classified as "restricted" entertainment. The "restricted film strip" shall be inserted in the trailer (or print) at the Director's office under supervision.</p>

**Table 49.1 (Continued)**

**Provincial Regulation and Classification of Films**

Province/ Name of Board	Drive-in Theatres
<i>New Brunswick</i>  New Brunswick Film Classification Board	No drive-in theatre shall be established having any building, fence or construction within 15 metres from the centre of the public highway.
<i>Nova Scotia</i>  Amusement Regulations Board	No screen tower shall be so placed so that any projection screen is visible from a highway.
<i>Quebec</i>  Bureau de Surveillance du Cinéma	Films for adults only shall not be exhibited in outdoor theatres.
<i>Ontario</i>  Ontario Board of Censors	The Director can approve plans for construction of a drive-in theatre only if the application for construction is submitted with a copy of the resolution of the council of the local municipality authorizing the construction.
<i>Manitoba</i>  Manitoba Film Classification Board	No statutory authorization.
<i>Saskatchewan</i>  Saskatchewan Film Classification Board	No licence is to be granted for a new drive-in theatre unless the screen tower is placed so that its viewing surface is not visible from a numbered provincial highway.  A film designated by the Board as "not to be shown in drive-in theatres" shall not be shown in a drive-in.
<i>Alberta</i>  Alberta Motion Picture Censor Board	No statutory authorization.
<i>British Columbia</i>  British Columbia Film Classification Branch	Certain films are classified as "Restricted Entertainment — Designated Theatres Only" and cannot be shown at drive-ins.



**Table 49.1 (Continued)**

**Provincial Regulation and Classification of Films**

Province/ Name of Board	Complaints
<i>New Brunswick</i> New Brunswick Film Classification Board	Receives about 10-12 formal complaints a year. Numerous informal calls or inquiries are received about the classification or acceptance/rejection of certain films.
<i>Nova Scotia</i> Amusement Regulations Board	Receives about six complaints a month.
<i>Quebec</i> Bureau de surveillance du cinéma	No information received.
<i>Ontario</i> Ontario Board of Censors	70 oral and written complaints for the one year period prior to July, 1982.
<i>Manitoba</i> Manitoba Film Classification Board	Receives one to two per month. Yearly total, 10 – 14.
<i>Saskatchewan</i> Saskatchewan Film Classification Board	Registry of complaints implemented in January, 1982. Verbal complaints received at the rate of one or two a month.
<i>Alberta</i> Alberta Motion Picture Censor Board	10-15 written complaints annually, and 10-15 oral for a total of 20-30 annually. The Board will investigate complaints and alter ratings in response to complaints.
<i>British Columbia</i> British Columbia Film Classification Branch	1980 — 30 1981 — 41  The movie Caligula received a total of seven complaints.

**Table 49.1 (Continued)**

**Provincial Regulation and Classification of Films**

Province/ Name of Board	Community Involvement by the Board
<p><i>New Brunswick</i></p> <p>New Brunswick Film Classification Board</p>	<p>Meets with various groups to discuss the role of the Board. Invites responses from the public at these presentations and anyone else who wishes to express their opinion. Attends conference every two years for Theatre Branch Directors/ Chairmen to determine what is happening in other provinces.</p>
<p><i>Nova Scotia</i></p> <p>Amusement Regulations Board</p>	<p>Public speaking engagements, conferences, letters and phone calls. Members consult friends, neighbours and business associates. Informal research.</p>
<p><i>Quebec</i></p> <p>Bureau de Surveillance du Cinéma</p>	<ol style="list-style-type: none"> <li>1. Regional inspection Service: five travelling inspectors cover all of Quebec, throughout the year, visiting more than 500 film houses each month. In each of his/her regions an inspector must gather all possible information concerning the current state of public opinion, viewer reactions and the opinions expressed in the local and regional press. This is followed by regular written reports designed to inform the director of public opinion.</li> <li>2. Public Relations Service: a direct dialogue with the public: <ol style="list-style-type: none"> <li>(a) a record is made of the date of every call received by the Board, the name and address of the caller and the nature of the call. Many calls are followed up with a letter from the Board explaining its position, and also with Board publications.</li> <li>(b) Every letter from a citizen or group is answered.</li> </ol> </li> <li>3. Research and Documentation Service: <p>All relevant articles, reports or studies from over 150 magazines and newspapers are collected, catalogued, and filed to be kept available for the Board's reference, and to enable the Board to gauge public opinion.</p> </li> <li>4. In order to inform and educate, the Board puts out six regular publications: <ol style="list-style-type: none"> <li>(a) Monthly list of films according to classification;</li> <li>(b) Monthly list of full length films and short subjects according to country of origin and language;</li> </ol> </li> </ol>

**Table 49.1 (Continued)**

**Provincial Regulation and Classification of Films**

Province/ Name of Board	Community Involvement by the Board
<p><i>Quebec</i></p> <p>Bureau de Surveillance du Cinéma—(Cont'd)</p>	<p>(c) Bi-annual list of film houses in Quebec;</p> <p>(d) Cinéma in Quebec (a list of addresses);</p> <p>(e) The Journal of Films and Viewer Categories (published every 18 months for the last 70 years).</p> <p>(f) Bi-monthly report published from September to June (20 issues per year) reproducing articles, reports, and studies from reputable periodicals. It is divided into three sections: i) Society; ii) Cinéma and Audio-visual Issues; and iii) Censorship.</p>
<p><i>Ontario</i></p> <p>Ontario Board of Censors</p>	<p>Board puts on presentations to various groups and invites feedback. Survey and public opinion polls. Monitors letters and complaints received. Reviews newspapers.</p>
<p><i>Manitoba</i></p> <p>Manitoba Film Classification Board</p>	<p>The Board puts on presentations. Membership of Board rotated from different sectors of the community. Considers opinions of personnel and feedback from presentations.</p>
<p><i>Saskatchewan</i></p> <p>Saskatchewan Film Classification Board</p>	<p>The Board puts on presentations to any interested groups. Community standards developed as a result of input from presentations, other Boards, phone calls and theatre managers.</p>
<p><i>Alberta</i></p> <p>Alberta Motion Picture Censor Board</p>	<p>The Board monitors what is happening in other provinces. The Board uses feedback from the community in trying to reflect community standards. Board puts on presentations for benefit of schools, groups and parents.</p>
<p><i>British Columbia</i></p> <p>British Columbia Film Classification Branch</p>	<p>Talks and lectures to various groups. The Board is receptive to public opinion. The Director is in constant touch with other Provincial boards.</p>



**Table 49.1 (Continued)**

**Provincial Regulation and Classification of Films**

Province/ Name of Board	Classification, Cutting and Rejection of Films (35 mm and/or 16 mm full length feature films only)										
<p><i>New Brunswick</i></p> <p>New Brunswick Film Classification Board</p>	<p><i>Year 80/81:</i></p> <table> <tr> <td>Total Examined</td><td>289</td></tr> <tr> <td>Approved</td><td>283</td></tr> <tr> <td>Restricted</td><td>120</td></tr> <tr> <td>Cut</td><td>0</td></tr> <tr> <td>Rejected</td><td>6</td></tr> </table> <p>35 mm only.</p>	Total Examined	289	Approved	283	Restricted	120	Cut	0	Rejected	6
Total Examined	289										
Approved	283										
Restricted	120										
Cut	0										
Rejected	6										
<p><i>Nova Scotia</i></p> <p>Amusement Regulations Board</p>	<p><i>Year 79/80:</i></p> <table> <tr> <td>Total Examined</td><td>283</td></tr> <tr> <td>Approved</td><td>281</td></tr> <tr> <td>Restricted</td><td>114</td></tr> <tr> <td>Cut</td><td>0</td></tr> <tr> <td>Rejected</td><td>2</td></tr> </table> <p>35 mm only. Cuts by distributor only; Board does not make cuts.</p>	Total Examined	283	Approved	281	Restricted	114	Cut	0	Rejected	2
Total Examined	283										
Approved	281										
Restricted	114										
Cut	0										
Rejected	2										
<p><i>Quebec</i></p> <p>Bureau de Surveillance du Cinéma</p>	<p><i>Year 80/81:</i></p> <table> <tr> <td>Total Examined</td><td>970</td></tr> <tr> <td>Approved</td><td>970</td></tr> <tr> <td>Restricted</td><td>247</td></tr> <tr> <td>Cut</td><td>0</td></tr> <tr> <td>Rejected</td><td>0</td></tr> </table> <p>Annual report does not specify whether these figures refer to both 16 and 35 mm feature films, or only to 35 mm films.</p>	Total Examined	970	Approved	970	Restricted	247	Cut	0	Rejected	0
Total Examined	970										
Approved	970										
Restricted	247										
Cut	0										
Rejected	0										
<p><i>Ontario</i></p> <p>Ontario Board of Censors</p>	<p><i>Year 80/81:</i></p> <table> <tr> <td>Total Examined</td><td>1154</td></tr> <tr> <td>Approved</td><td>1143</td></tr> <tr> <td>Restricted</td><td>337</td></tr> <tr> <td>Cut</td><td>64</td></tr> <tr> <td>Rejected</td><td>5</td></tr> </table> <p>(With six films pending decision at end of fiscal year. 35 mm and 16 mm).</p>	Total Examined	1154	Approved	1143	Restricted	337	Cut	64	Rejected	5
Total Examined	1154										
Approved	1143										
Restricted	337										
Cut	64										
Rejected	5										

**Table 49.1 (Continued)**  
**Provincial Regulation and Classification of Films**

Province/ Name of Board	Classification, Cutting and Rejection of Films (35 mm and/or 16 mm full length feature films only)			
<i>Manitoba</i>  Manitoba Film Classification Board	<i>Year 80/81:</i>	Total Examined Approved Restricted Cut Rejected	399 399 70 0 0	35 mm only.
<i>Saskatchewan</i>  Saskatchewan Film Classification Board	<i>Year 80/81:</i>	Total Examined Approved Restricted Cut Rejected	403 400 168 10 3	35 and 16 mm. Current policy is to have the distributor make the cuts; consequently, they do not monitor the number of films needing cuts.
<i>Alberta</i>  Alberta Motion Picture Censor Board	<i>Year 80/81:</i>	Total Examined Approved: Restricted Cut Rejected	644 635 196 0 9	35 mm only. Films submitted to Alberta have been classified elsewhere, and as such, necessitate few if any cuts.
<i>British Columbia</i>  British Columbia Film Classification Branch	<i>Year 1980:</i>	Total Examined Approved Restricted Cut Rejected	672 669 159 14 3	35 and 16 mm.

**Table 49.1 (Continued)**

**Provincial Regulation and Classification of Films**

Province/ Name of Board	Police Policy
<i>New Brunswick</i>  New Brunswick Film Classification Board	No charges, 1979-81. Police can lay charges without consulting Crown Counsel.
<i>Nova Scotia</i>  Amusement Regulations Board	Police laid one charge in 1979. Police can lay charges without consulting Crown Counsel.
<i>Quebec</i>  Bureau de Surveillance du Cinéma	No information received.
<i>Ontario</i>  Ontario Board of Censors	Police can lay charges without consulting Crown Counsel.
<i>Manitoba</i>  Manitoba Film Classification Board	One charge in 1979. None for 1980 and 1981. As of January, 1981, police must consult with Crown Counsel.
<i>Saskatchewan</i>  Saskatchewan Film Classification Board	No charges, 1979-81. Police can lay charges without consulting Crown Counsel.
<i>Alberta</i>  Alberta Motion Picture Censor Board	No charges in 1979 and 1980. One charge in 1981. Attorney General can and will instruct police to lay charges.
<i>British Columbia</i>  British Columbia Film Classification Branch	No charges, 1979-81. Police do not lay charges unless approved by Crown Counsel.



**Table 49.1 (Concluded)**  
**Provincial Regulation and Classification of Films**

Province/ Name of Board	Review of Three Films			
<i>New Brunswick</i>		<i>A</i>	<i>NA</i>	<i>S</i>
New Brunswick Film Classification Board	Caligula	x	—	xBV
	Pretty Baby	x	—	x
	Beau Père		never submitted	
<i>Nova Scotia</i>		<i>A</i>	<i>NA</i>	<i>S</i>
Amusement Regulations Board	Caligula	—	x	—
	Pretty Baby	x	—	x
	Beau Père		never submitted	
<i>Quebec</i>		<i>A</i>	<i>NA</i>	<i>S</i>
Bureau de Surveillance du Cinéma	Caligula	x	—	xAV/WC
	Pretty Baby	x	—	x
	Beau Père	x	—	x
<i>Ontario</i>		<i>A</i>	<i>NA</i>	<i>S</i>
Ontario Board of Censors	Caligula	x	—	xBV/WC
	Pretty Baby	—	x	—
	Beau Père	—	x	—
<i>Manitoba</i>		<i>A</i>	<i>NA</i>	<i>S</i>
Manitoba Film Classification Board	Caligula	x	—	xBV
	Pretty Baby	x	—	x
	Beau Père	x	—	x
<i>Saskatchewan</i>		<i>A</i>	<i>NA</i>	<i>S</i>
Saskatchewan Film Classification Board	Caligula	x	—	xBV
	Pretty Baby	—	x	—
	Beau Père	x	—	—
<i>Alberta</i>		<i>A</i>	<i>NA</i>	<i>S</i>
Alberta Motion Picture Censor Board	Caligula	x	—	xBV
	Pretty Baby	x	—	x
	Beau Père	x	—	—
<i>British Columbia</i>		<i>A</i>	<i>NA</i>	<i>S</i>
British Columbia Film Classification Branch	Caligula	x	—	xAV
	Pretty Baby	x	—	x
	Beau Père	x	—	x

Notes:

1. Key to classification of three films is: A—approved; NA—not approved; S—shown; AV—American Version; BV—British Version; and WC—with cuts.

2. When this table was compiled certain sections of Quebec's *An Act Respecting the Cinéma*, R.S.Q. 1977, c. C-18, had yet to be proclaimed in force (Sections 12 to 35, 38, 39 and 42 to 44). Also, section 94 of *An Act Respecting the Cinéma*, S.Q. 1975, c. 14, has never been proclaimed in force; this latter section repeals the original *Cinéma Act*, R.S.Q. 1964, c. 55. Should the sections in question be proclaimed, certain aspects of the process by which film exhibition is regulated in Quebec would be altered significantly (particularly the procedure for appealing or reviewing film classifications).

3. The recent introduction in the Quebec legislature of Bill 109, *An Act Respecting the Cinéma and Video Industry*. Given its first reading on December 17, 1982, this proposed legislation, if passed, would make several important changes to the law, including widening its ambit to encompass the growing video industry.

With respect to the information derived from the boards' annual reports, several points should be noted. In comparing the numbers of films viewed by the boards for 1980-81, only the figures pertaining to full length feature films were considered. For some provinces, information was available only on the number of 35 millimetre films reviewed. Where available, information on both 16 and 35 millimetre films is included. Further, the number of films listed as having been cut refers only to those films edited by the boards themselves. Since some boards request the film distributors to make excisions, the total number of films released in edited versions is greater than that indicated in Table 49.1. Finally, the "restricted entry" category refers to the most restrictive film classification in each province.

## Approval and Showing of Specific Films

The provincial boards' review and classification of three films, *Caligula*, *Pretty Baby* and *Beau Père* provides an indication of their approaches to different controversial film depictions of explicit types of sexual behaviour. The film *Caligula* contains scenes of explicit sexual acts and of violence, including: stab-bings, decapitations, mass murder, rape and the mutilation of male and female genitalia. In addition, the film portrays acts of incest, necrophilia, group sex, male and female homosexuality, oral-genital sex, sexual intercourse and bug-gery. The film exists in two different versions, an American (14,130 feet in length and running 156 minutes) and a British (13,230 feet in length and run-ning 146 minutes). The British version contains 20 fewer minutes of explicit sex and violence than does the American, and includes 10 minutes of plot develop-ment scenes not found in the American version.

The films *Pretty Baby* and *Beau Père* deal with themes of child sexual abuse and exploitation. The former production concerns a 12 year-old prostitute and contains scenes of full and partial nudity involving the child actress who appeared in the title role. *Beau Père* concerns an incestuous relationship between a 15 year-old girl and her father and contains at least one scene in which the breasts of the young actress playing the incest victim are exposed.

The showing of *Caligula* was approved by seven of eight provincial boards, five of which approved the British version (one with cuts) and two the Ameri-can version (one with cuts).

*Pretty Baby* was approved by six of eight boards without cuts. *Beau Père* was not submitted for approval to two boards, was not approved by one and was approved by five boards. The findings in relation to the showing of these three films indicate that:

1. Policies vary considerably from one part of the country to another;
2. Sexually explicit scenes depicting violent assaults have been shown in most parts of Canada; and
3. Movies dealing with themes of child sexual abuse and exploitation have been shown in most provinces across Canada.

In considering these findings, the Committee believes that more uniform and specific criteria must be developed and applied in relation to the film depiction of children and youths in scenes involving child sexual abuse and exploitation. In this regard, we believe that there must be a safeguard in all parts of Canada that films of this kind be prohibited — absolutely. Such movies depict children in sexual scenes which are degrading and exploitative.

## Municipal By-laws

The *Constitution Act, 1867* confers on the provinces jurisdiction to make laws relating to “Property and Civil Rights in the Province”,<sup>2</sup> “Shop, Saloon, Tavern, Auctioneer, and other licences in order to the raising of a Revenue for Provincial, local, or Municipal Purposes”,<sup>3</sup> and “generally all matters of a merely local or private nature in the province”,<sup>4</sup> and empowers each province to enforce its validly enacted laws by means of fine, penalty or imprisonment.<sup>5</sup> One form which this legislative jurisdiction has taken is the provincial regulation of businesses which provide adult-oriented entertainments (for example, body-rub parlours and escort services) or which offer for view or sale sexually explicit publications (e.g., magazines, “peep-shows” and video cassettes). Typically, a province establishes this regulatory scheme by enacting broadly worded laws that grant municipalities the authority to license, regulate and govern certain businesses or occupations.<sup>6</sup> It is then left to each municipality to specify, through the enactment of municipal by-laws, the precise form which this regulation will take with respect to different kinds of businesses operating within the municipality.

For example, Ontario’s *Municipal Act*<sup>7</sup> provides that “by-laws may be passed by the councils of all municipalities for licensing, regulating, governing, classifying and inspecting adult entertainment parlours . . .” and that a by-law passed under this section “may prohibit any person carrying on or engaged in the trade, calling, business or occupation for which a license is required under this section *from permitting any person under the age of eighteen years to enter or remain in the adult entertainment parlour or any part thereof*”.<sup>8</sup>

The Ontario *Act* then proceeds to define “adult entertainment parlour” and related terms. An “adult entertainment parlour” means “any premises or part thereof in which is provided, in pursuance of a trade, calling, business or occupation, goods or services appealing to or designed to appeal to erotic or sexual appetites or inclinations”.<sup>9</sup> “Goods” is defined as including books, magazines, pictures, slides, film, phonograph records, prerecorded magnetic tape and any other viewing or listening matter.<sup>10</sup> “Services” includes activities, facilities, performances, exhibitions, viewings and encounters;<sup>11</sup> “services designed to appeal to erotic or sexual appetites or inclinations” is defined as including: services of which a principal feature or characteristic is the nudity or partial nudity of any person; and services in respect of which the word “nude”, “naked”, “topless”, “bottomless”, “sexy”, or any other word or any picture,



symbol or representation having like meaning or implication is used in any advertisement.<sup>12</sup>

This provincial enabling legislation has been used by Ontario municipalities not only to regulate the operation of businesses which are quintessentially “adult entertainment parlours” (e.g., “sex shops”),<sup>13</sup> but also to regulate the accessibility to young persons of sexually explicit publications sold or displayed within the municipality (e.g., in variety stores). In Ontario, the Town of Newmarket, the City of Burlington and the Metropolitan Council of Toronto, among others, have enacted such by-laws. In British Columbia, the City of Victoria has passed a by-law of wider scope.

At their best, the various municipal by-laws reviewed by the Committee are an effective method of regulating certain business and other activities in a manner specified by the council of a given municipality.<sup>14</sup> Delegated legislation of this sort must, however, accord with certain legal principles in order to withstand challenges to its validity in the courts.

First, **a municipality has no greater power than the legislature which created it.** It cannot enact, nor can a province validly authorize it to enact, a by-law which in pith and substance relates to a matter exclusively within federal constitutional jurisdiction.<sup>15</sup> It was on this ground that the Supreme Court of Canada declared *ultra vires* a Calgary by-law relating to the use of city streets for the purpose of prostitution. The essential character of the by-law was a prohibition on prostitutes from working the streets and the by-law was accordingly deemed to have invaded Parliament’s exclusive legislative power in relation to the criminal law.<sup>16</sup>

Second, **even where the “pith and substance” of a municipal by-law concerns a matter clearly within provincial legislative jurisdiction, the power of the municipality to legislate in the area must be set out in provincial enabling legislation. The municipality has only such powers as the legislature chooses to confer on it.**

Third, **a municipal by-law must be explicit enough so that a citizen who seeks to comply with its terms is able, by reading the by-law, to ascertain his or her obligations under it.** As Mr. Justice Kelly of the Ontario Court of Appeal has observed:<sup>17</sup>

When a municipal council purports to legislate under the powers found in the *Municipal Act* and thereby creates obligations to be observed by its citizens, the failure to observe which attracts punishment, it is to be expected that the by-law creating such obligations will itself be so explicit that a well-intentioned citizen seeking to observe the provisions of the by-law may, from a reading of the by-law, without the enlargements of its requirement by the order of a municipal servant, be able to satisfy himself that he has complied with its requirements.

Non-compliance with this principle proved fatal to the validity of a Hamilton, Ontario by-law designed to keep “erotic goods” (including magazines) out

of the view of young persons.<sup>18</sup> "Erotic goods" were defined in the by-law as "goods appealing to or designed to appeal to erotic or sexual appetites or inclinations". The Ontario Court of Appeal declared that part of the by-law which dealt with the display of erotic magazines to be invalid, since it left the store owners without any guide as to the kind of magazines comprehended by it.<sup>19</sup>

## Summary

On the basis of its review of the guidelines and procedures adopted by provincial film classification, review or censorship boards, the Committee found that:

1. These policies and procedures vary widely across Canada with the result that there is no reasonably uniform national standard.
2. Sexually explicit scenes depicting violent assaults have been shown in most parts of the country.
3. Movies whose themes include child sexual abuse and exploitation have been approved and shown in most parts of the country.

In relation to these findings, the first of their kind known to the Committee seeking to compare the guidelines of provincial boards and the application of their review procedures, the Committee recommends that more uniform and specific criteria be developed with respect to the showing of films depicting child sexual abuse and exploitation. The findings are clear and unequivocal that existing guidelines and their application constitute a porous, uneven and inconsistent method of regulating the showing of films of this kind.

Elsewhere in the Report, the Committee recommends that the designation of sexual offences in the *Criminal Code* be more directly based upon the specific types of sexual acts committed against children and youths. In relation to this recommendation, the Committee also recommends that the depiction of these types of sexual acts in which children and youths are portrayed should serve as the basis for the approval-disapproval and/or the classification of films to be shown in theatres.

In light of its recommendations of amendments to the *Criminal Code* given in Chapter 3:

The Committee recommends that the provincial Departments of the Attorney General, in conjunction with the federal Department of Justice, develop criteria for film and video classification which conform with the *Criminal Code* prohibitions against visual representations of explicit sexual conduct involving persons under 18 years of age.

## References

### Chapter 49: Provincial and Municipal Regulation

- <sup>1</sup> *The Censoring of Moving Pictures Act*, R.S.Nfld. 1970, c. 30.
- <sup>2</sup> *Constitution Act, 1867*, Section 92 (13). See also Section 92 (8).
- <sup>3</sup> *Constitution Act, 1867*, Section 92 (9).
- <sup>4</sup> *Constitution Act, 1867*, Section 92 (16).
- <sup>5</sup> *Constitution Act, 1867*, Section 92 (15).
- <sup>6</sup> See generally Rust-D'Eye, *Municipal Licensing: Enabling Legislation and By-Laws*, [1979-81] *Advocates' Quarterly* 423.
- <sup>7</sup> *Municipal Act*, R.S.O. 1980, c. 302.
- <sup>8</sup> *Municipal Act*, R.S.O. 1980, c. 302, s. 222. Emphasis added.
- <sup>9</sup> *Municipal Act*, R.S.O. 1980, c. 302, s. 222 (9)(a).
- <sup>10</sup> *Municipal Act*, R.S.O. 1980, c. 302, s. 222 (9)(b).
- <sup>11</sup> *Municipal Act*, R.S.O. 1980, c. 302, s. 222 (9)(e).
- <sup>12</sup> *Municipal Act*, R.S.O. 1980, c. 302, s. 222 (9)(f).
- <sup>13</sup> "Body-rub parlours" are separately provided for. See ss. of the *Municipal Act*, R.S.O. 1980, c. 302.
- <sup>14</sup> See generally Rust-D'Eye, *supra*, note 6.
- <sup>15</sup> *Ibid.*, at 429-32.
- <sup>16</sup> *Westendorp v. The Queen* (1983), 2 C.C.C. (3d) 330 (S.C.C.).
- <sup>17</sup> *R. v. Sandler*, [1971] 3 O.R. 614 at 620 (H.C.J.).
- <sup>18</sup> City of Hamilton By-Law No. 79-144.
- <sup>19</sup> *Re Hamilton Independent Variety and Confectionary Stores Inc. v. City of Hamilton*, not yet reported, January 17, 1983 (Ont. C.A.).





## Chapter 50

# Enforcement Practice

This chapter reviews the enforcement of the various statutory provisions enacted for the purpose of controlling sexually explicit and obscene materials (including child pornography) and the administration and operation of agencies involved in this area of enforcement. The agencies in question are: Revenue Canada Customs and Excise; the R.C.M.P. Customs and Excise Section; and provincial and municipal police forces.

## Revenue Canada Customs and Excise Division

### Criteria For Seizure

The mandate of the Customs and Excise Division of Revenue Canada includes the administration of the *Customs Act* and the *Customs Tariff*. It is the responsibility of Revenue Canada Customs and Excise to prevent immoral or indecent matter from entering the country. According to Revenue Canada:

The criteria used for determining the admissibility [of sexually explicit or pornographic materials] . . . are based on the related sections of the *Criminal Code* which deal with "obscene" matters and on court decisions made under the *Criminal Code* and under the *Customs Act*. Since the administration reflects the standards of the community at large, these criteria which are national rather than local, have changed over the years and certain magazines which might have been prohibited in the past as indecent are now admitted.<sup>1</sup>

Since September, 1972, the power to prohibit the entry of goods under the pornography-related provisions of the *Customs Tariff* has been decentralized and has comprised part of the authority delegated to line officers (i.e., Customs inspectors) at each of the nation's more than 270 Customs ports. In order to facilitate uniform standards of administration at all ports of entry, guidelines and instructions have been provided to all local port officers and district offices. The relevant policy document stipulates:

9.(2) For the purpose of assisting field officers in making judgments, the following guidelines are to be followed:

The following material will be dealt with at the field level for initial classification and will be prohibited:

- (i) Illustrated material containing hard-core pornographic pictures which lewdly and explicitly display the male and female sexual organs, sexual intercourse, sexual perversions and such acts, including bestiality.
- (ii) Reading material, including hard-core fictional text dedicated entirely to sexual exploitation and containing no redeeming features. The primary source of material of this character is the paperback, or so-called "pocket" publications.

The following material will be referred to headquarters for initial classification:

- (iii) That type of material, the so-called "grey area", with illustrations depicting similar subjects to those described in 9.(2)(i) but in a less explicit fashion, with emphasis, however, mainly on sexual activities and apparently designed to appeal in the same way as hard-core type pornography. In this category are the pseudo or so-called "Nudist" and "Film" magazines which make pretensions to being *bona fide* but which include lewd or other pornographic displays.
- (iv) Any publication which despite its format or alleged scientific, medical or artistic purpose appears to be in essence an indecent or immoral publication in disguise.
- (v) Any material which might reasonably be considered treasonable or seditious.
- (vi) Any publication whose contents appear to counsel, procure or incite a person to possess, cultivate or traffic in narcotics.
- (vii) Any publication which appears to advocate, promote or incite hatred against any identifiable group, that is, by colour, race, religion or ethnic origin.
- (viii) Any publication concerned with violence which counsels, appears to incite, advises, recommends or persuades persons to commit acts of violence which are prohibited by the *Criminal Code*.

Generally speaking, items which do not fall within the foregoing categories may be allowed to be imported including the so-called "naughty" or "spicy" girlie type magazines where the models are partially clad so that the genitals are not exposed and perversions are not depicted. Cultural and educational publications and *bona fide* nudist magazines, although illustrated with nude males or females, but not including indecent poses or over-emphasis on the sexual organs, are also considered admissible. Non-illustrated fictional reading material (or with inoffensive illustrations) which does not fall in the category of hard-core pornography described in 9.(2)(ii) should be allowed to be imported. It is thus the policy to prohibit only hard-core material of the latter type and this will be done at the field level. In case of doubt the material may be forwarded to headquarters for guidance.<sup>2</sup>

In these guidelines, there is no explicit reference to child pornography as a class of material whose entry into the country should be barred. However, the guidelines are sufficiently broad in scope, and their ambit sufficiently clear, to



make it extremely unlikely that any child pornography detected at a Customs port would be allowed into Canada.

**Of greater concern is the number of intangible, imprecise and undefined terms used in the guidelines to describe and differentiate the items which are admissible or inadmissible.** These terms and phrases include: "hard-core", "pornographic", "lewdly", "sexual perversions", "sexual exploitation", "redeeming features", "over-emphasis on the sexual organs" and "inoffensive illustrations". Linguistic vagaries of this sort afford wide discretionary powers to the individuals called upon to interpret them. The greater the number of such individuals is, the wider the interpretive latitude evinced by their judgments is likely to be. The wording of the guidelines tends to promote the problems that the document was intended to alleviate: widely disparate standards of enforcement and inconsistency or variation between the decisions made by individual officers.

These problems were found to exist in 1965, according to a paper prepared at the request of Maxwell Cohen, Dean of the Faculty of Law, McGill University. The report concerned *Customs Control of Imported Publications* and was drafted to assist a committee established to investigate the possibility of legislative control of the dissemination of hate propaganda in Canada.<sup>3</sup> The paper concluded that one of the main problems of existing legislative provisions designed to permit Customs to control the importation of certain kinds of literature was "that of exercising the prohibition of a publication uniformly and consistently from port to port across the country". The paper recommended that:

The decision as to whether certain items of printed or pictorial matter come within the definition [of material whose importation is prohibited] should not be left to Customs officers. The Department's instructions to custom ports of entry on what material is to be prohibited should be predicated upon the advice of competent authority and this advice must be such as to be applicable on a country-wide basis.<sup>4</sup>

## The Seizure Process

Under the current system of enforcement, line officers at local ports of entry are responsible for the initial evaluation of imported articles, and for the determination of whether or not their entry into Canada should be permitted. Material sufficiently objectionable to be detained at a port of entry is forwarded to the Regional Office of Customs having administrative authority over the port at which the particular seizure occurred. The 12 regional offices are located in Halifax, Quebec City, Montreal, Ottawa, Toronto, Hamilton, Windsor, London, Winnipeg, Regina, Calgary and Vancouver. At each office, Commodity Specialists make rulings on the admissibility or inadmissibility of seized items. The Commodity Specialists are officials drawn from the ranks of line officers. Their training includes the same 16 week Customs College course received by all prospective line officers, as well as their actual working experience in Customs inspection, part of which involves rotation between jobs at

their assigned port of entry in order to assure their familiarity with all aspects of the port's operation.

In order to become Commodity Specialists, line officers must apply and compete for vacant positions. After this selection process is complete, the new Commodity Specialists receive one week of on-the-job training designed to familiarize them with the paperwork that the job entails and to refresh them concerning the criteria according to which material can be classified as "indecent" or "immoral", for the purposes of the *Customs Tariff*.

Eighteen of the larger ports of entry are classified as district ports. In each of these ports, one officer serves as the Chairman of a District Committee, the responsibility of which is to review the decisions of the Commodity Specialists concerning material falling into the "grey area" between the clearly importable and the unquestionably unacceptable. Some of the larger local ports, at which seizures are more frequent, have adopted the practice of referring such borderline material directly to Ottawa for final rulings, thereby bypassing their District Ports. The Chairman's duties include notifying the release point (i.e., local port) of the Committee's decision, corresponding with the importer and referring all questionable items and appeals to Ottawa for final rulings.

Under the *Customs Act*, the importer of matter classified as immoral or indecent may appeal within 90 days of the ruling being made. Upon initial classification, the importer is informed of this statutory right. Appeals are made either in the form of a letter to the Deputy Minister of National Revenue or on standardized forms. However, because prohibitions frequently are made at the field level, appeals are processed through the port at which the seizure occurred. In the event that the appeal is denied, the importer is entitled under the *Customs Act* to appeal further. Such appeals must be initiated within 60 days of the Deputy Minister's decision, and are dealt with by a judge of the Supreme Court in Prince Edward Island, by a judge of the Court of Queen's Bench in New Brunswick, Saskatchewan and Alberta, by a judge of the Superior Court in Quebec, and by a judge of the County or District Court in all other provinces.

All questionable items detained are referred to a special office at Revenue Canada Customs and Excise Headquarters in Ottawa. This office, the Prohibited Importations Section, also reviews all appeals and recommends decisions to the Deputy Minister. In addition, the Section is responsible for notifying the field ports of the decisions made regarding the "grey area" materials referred to it; the ports in question must then inform the would-be importers about the Section's decision. Every second week, the Section distributes to the field a list reporting its rulings made during that period.

**In the Committee's judgment, the listing of rulings has the potential to serve a valuable function in Revenue Canada's efforts to control the importation of adult materials. Line Officers, Commodity Specialists and District Committees could draw upon the report for guidance in their deliberations concerning the importability of borderline material. If it were treated as a set**



of directives from "head office", the listing could facilitate virtually uniform nation-wide standards for seizure.

Through extensive interviews with the responsible local Customs officials, the Committee learned that the bi-weekly listing is not widely accessible. The items that have been the subjects of the Prohibited Importations Section's rulings are not listed alphabetically according to title. Considering that the Prohibited Importations Section receives about 1000 items each month to be ruled upon, it can be appreciated how difficult it may be to locate a particular title on the twice-monthly issued listing. At the Vancouver Regional Office, the initiative has been taken to alphabetize the entries on the list. The Committee was informed of numerous examples across the country in which regional decisions were inconsistent not only with those made in Ottawa, but also with those made in the same office; in some instances, an official has been inconsistent with his or her own prior rulings concerning the same magazine title.

The Prohibited Importations Section has developed a policy of co-operation with periodical distributors and publishers. The distributor, or a lawyer representing the publisher, of a questionable imported publication will submit a "blueline" (also referred to as a "chromoline" or "dummy") copy of a forthcoming issue to the Prohibited Importations Section, and will be advised whether any depictions contained therein are sufficiently offensive to prevent the magazine from being allowed into Canada. After the necessary excisions have been made, the issue is re-submitted for a ruling, and generally, receives approval.

Another Customs official whose function may have an impact upon the seizure process is the Regional Intelligence Officer (R.I.O.). R.I.O.s are stationed either centrally (i.e., in Ottawa) or regionally, depending upon their geographic area of jurisdiction. The R.I.O.'s basic duty is to gather information concerning Customs-related incidents occurring in his/her assigned region. The R.I.O. also acts as a liaison with other agencies, contacting such organizations when their involvement is warranted by the facts of a case under investigation. If the case appears to be purely Customs-related, the R.I.O. may decide to conduct a more exhaustive follow-up investigation. If grounds for laying charges are uncovered, the standard practice is for the R.I.O. to notify personnel from R.C.M.P. Customs and Excise, so that they can make the necessary arrests.

## Liaison with Canada Post

The interrelationship of Revenue Canada Customs and Excise and the Canada Post Corporation is of critical importance to the process by which the importation of pornography is regulated. Customs officials are stationed in all post office facilities handling mail of foreign origin. The initial screening of mail occurs at each of five International Mail Units (I.M.U.s) across the country. The I.M.U.s located in Halifax, Montreal, Toronto, Winnipeg and Vancouver are the central points from which mail first enters Canada. After the



preliminary screening, the mail is sent to one of 12 secondary screening facilities across the country.

Under the *Canada Post Corporation Act*,<sup>5</sup> a legal distinction exists between letters and other forms of mail. In practice, the term "letter" seems to be synonymous with mail sent by first class post. As a result of this differentiation, second, third and fourth class mail appears to be far more readily accessible for purposes of Customs inspection than is first class post. For this reason, incoming foreign first class mail received by the I.M.U. is separated from the second, third and fourth class post, the latter classes being subject to automatic inspection to determine which items are dutiable.

In order to obtain an illustration of the volume of mail inspected, the Committee contacted the responsible officials at the I.M.U. in Toronto. That unit handled approximately 9,500,000 pieces of incoming foreign mail in 1982, or about 40,000 pieces daily. There were 24 staff members employed to examine all posted matter. The average inspector handled almost 1700 pieces of mail daily, or well over 200 pieces hourly. Any time spent opening or examining letters or packages which may require individual scrutiny reduces the time allotted for the inspection of the remaining load of mail.

No information is available concerning the thoroughness of these inspections. However, when the sheer volume of mail that the system processes is considered, it is difficult to imagine the Customs officials having sufficient time to give most items more than a cursory going-over (with the result that more carefully concealed pornographic materials may escape detection and examination).

When the Customs officer inspecting incoming mail finds an item that he or she considers classifiable as indecent or immoral, he or she forwards the item to the Regional Customs Office for examination and ruling by a Commodity Specialist. If the contents of the envelope or parcel in question are then ruled prohibited, the importer has the same rights of appeal as a person from whom material is seized at a border crossing; that is, an appeal may be submitted through the regional or port Collector of Customs to the Deputy Minister. Material ruled by the Commodity Specialist not to be immoral or indecent is released and delivered to the importer. Items about which the Commodity Specialist has difficulty making a decision are forwarded to Ottawa for a ruling by the Prohibited Importations Section.

At the International Mail Unit in Winnipeg, the Committee learned that measures had been taken to increase the effectiveness of Customs officers in spotting items that should be seized. The Commodity Specialist assigned to the Winnipeg Regional Customs Office had posted notices in the I.M.U.'s sorting area designed to alert the Customs personnel concerning the kinds of packages for which they should be on the lookout. The notices described the methods used by importers of unlawfully imported adult material to prevent it from being detected in the mail. It appears to be the practice at the Winnipeg I.M.U. to rotate Customs employees to other assignments less frequently than

at other I.M.U.s. As a result, Customs officers inspecting mail in Winnipeg may be more experienced and more knowledgeable concerning the importation of pornography than comparable officials stationed elsewhere. The disproportionately high volume of detected material mailed to Manitoba addresses between 1979 and 1981 detained by Customs attests to the efficacy of the methods employed at the Winnipeg I.M.U. (see Chapter 51).

The special attention afforded to certain types of mail may impede the detection and seizure of immoral or indecent matter. The official Post Office/Customs position, as of March, 1982, was as follows:

2. It is not expected that Canada Post employees will have to make any determination that any specific goods are dutiable or controlled. There are, however, types of mail matter that can be delivered automatically without reference to Canada Customs; for example, correspondence, letters, postcards, newspapers and magazines posted to individuals by publishers need not be referred. Regional Collectors of Customs are encouraged to give their counterparts in Canada Post any further guidance or information on the types of mail that can be forwarded directly so as to ensure the best possible service.
8. . . . First class or letter mail will be subject to a "cull" by Canada Post employees to provide for automatic release of such material as envisaged in section 2. As well, "AO" (Autres Objets) will be culled to remove for direct delivery, the newspapers, circulars and magazines which need not be examined by Customs.
9. Notwithstanding the foregoing, Canada Customs may from time to time arrange for sampling checks of the letter mail for AO material culled out for direct delivery. The purpose of these checks is to do a sampling of such mail for illicit importations of narcotics or other material concealed therein.<sup>6</sup>

Considering the implications of these instructions, it is evident that the use of certain importation practices designed to hide the nature of the material being posted could result in substantial quantities of immoral or indecent depictions passing through the mail. For instance, legitimate magazines or newspapers can be used to conceal copies of pornographic publications. Individual photographs and small format (5" x 7") magazines may be readily concealed in letter-sized or slightly over-sized envelopes. Sending such envelopes by first class mail renders extremely remote the chance of their detection and seizure.

## Storage of Information

A factor that may have a significant impact on the investigation of cases involving child pornography and other indecent, immoral or obscene matter is the effectiveness of the system by which records of Customs seizures are kept and are made available to appropriate law enforcement agencies. For instance, learning that a person from whom pornography has just been seized at a border crossing has had similar matter detained by Customs on a number of previous



occasions may strongly influence an enforcement agency in deciding whether to conduct a comprehensive investigation of that individual (e.g., in deciding whether to apply for a warrant to search the person's place of residence). The efficient maintenance of records of Customs Seizures could prove invaluable in relation to the identification of habitual smugglers of pornography, and more importantly, the major consumers of child pornography.

All district Customs offices are encouraged to contribute information concerning seizures of pornographic materials to Ottawa for computerized storage at Revenue Canada Customs and Excise Headquarters. The Committee was informed that 13 offices had supplied such information; however, in examining Revenue Canada files for the period 1979-1981, it was discovered that only three offices had contributed information. In order to obtain a more accurate picture of the number and nature of pornography seizures, the Committee visited the Regional Offices. Here, a hand search was conducted of Customs records. While about 10,000 entries were obtained from the computerized file in Ottawa, approximately an additional 16,000 entries came to light as a result of these visits.

Aside from the sheer incompleteness of the information contained in the central computerized file, the quality of information obtainable from this source often lacked pertinent details. For some of the 16,000 entries, few details were recorded that would be vital for the purposes of police investigation; specifically, the printouts from the file frequently failed to indicate either what material was seized (by title or description) or the number of items detained in each seizure. A number of duplicated entries were found. The failure of numerous offices to contribute information to the file could seriously hamper police investigations. Enforcement agencies checking with Ottawa, for instance, may be informed that a suspect has never had material seized from him when, in fact, any number of seizures from that person have been made by an office that does not contribute information to Headquarters.

## R.C.M.P. Customs and Excise Section

### Jurisdiction

Members of the Royal Canadian Mounted Police may be appointed as peace officers under the *R.C.M.P. Act*,<sup>7</sup> and when so appointed, are peace officers in every part of Canada. As such, they may be called upon to enforce not only the provisions of the *Criminal Code* throughout the country, but also a wide range of other federal statutes. In accordance with federal-provincial contracts, provincial police service is extended by the R.C.M.P. to the Yukon and Northwest Territories, and to all provinces not maintaining their own provincial police forces (in effect, to all provinces except Ontario and Quebec; the Newfoundland Constabulary, in practice, restricts its policing activities to certain regions of the province). The R.C.M.P. provides contracted municipal police service to about 200 municipalities in all provinces, except Ontario and



Quebec. When acting in the capacity of provincial and federal police, the R.C.M.P. enforces the entire gamut of Canadian legislation, from the *Criminal Code* and other federal statutes to provincial acts and municipal by-laws.

Broad federal enforcement goals, policies and priorities for the R.C.M.P. are set by the agency itself, in consultation with the Solicitor General of Canada. With respect to R.C.M.P. work at the provincial and municipal levels, goals, policies and priorities are determined in co-operation with the Attorney General or Solicitor General of the particular province.

Under Canadian constitutional law, enforcement of the *Criminal Code* is delegated to the provincial Attorneys General. Thus, while it is the peace officer who institutes criminal proceedings by laying an information before a justice of the peace, the Attorney General of the particular province or territory has the power to halt any such proceedings by withdrawing the information, or by issuing a stay of prosecution pursuant to section 508 of the *Code*. Whether any such action is taken, or whether the prosecution is permitted to go to trial, may depend upon the prosecution policy of the Attorney General, and more specifically, upon the amount of emphasis that the Attorney General has determined should be placed upon enforcing certain sections of the *Criminal Code*. It is as a result of this constitutional division of authority, this discretionary power and this policy determination, that the efficacy of the *Criminal Code* provisions relating to obscenity can be minimized or even negated in different parts of the country. A similar situation pertains with respect to the charging practice of the R.C.M.P. when its members are involved in provincial and municipal policing since, as noted, the agency's goals and policies under such circumstances are set in consultation with the Attorney General. It has thus been pointed out to the Committee that:

"Priorities may change frequently, depending on operational necessity, direction of the A.G., etc., and may vary from Unit to Unit, City to City or Province to Province."<sup>8</sup>

## Enforcement

The Section of the R.C.M.P. to be discussed first concerns itself exclusively with Customs and Excise matters. As a matter of practice, responsibility is divided between: R.C.M.P. Customs and Excise; and Revenue Canada Customs and Excise. Revenue Canada acts primarily to prevent smuggled goods from entering the country, and to this end, maintains offices at border crossings and at all International Airports, that is, at all airports at which flights arrive from outside of Canada; in turn, the R.C.M.P. undertakes to investigate and seize smuggled goods that may penetrate the Customs barrier and find their way inland.

Canada, for purposes of law enforcement by the R.C.M.P. is divided into 13 separate districts, or Divisions, each with its own Divisional Headquarters

(i.e., one Headquarters for each province or territory, and a National Headquarters in Ottawa).

According to the *R.C.M.P. Act*,

- (4) Every officer, and every member appointed by the Commissioner to be a peace officer, has, with respect to the revenue laws of Canada all the rights, privileges and immunities of a customs and excise officer, including authority to make seizures of goods for infraction of revenue laws and to lay informations in proceedings brought for the recovery of penalties therefore.<sup>9</sup>

Acting under the authority of the *Customs Act* (section 205), the R.C.M.P. Customs and Excise Section seizes smuggled goods found inland. As a rule, material so seized is forfeited directly to the Crown, except in cases where the person charged with smuggling is able to show "lawful excuse" — that is, to prove that the material was not brought into the country illegally.

Smuggled pornography, however, often constitutes an exception to this rule. In order for the goods to be forfeited, they must have been imported unlawfully. In the case of pornographic matters, importation would be illegal only if the items brought into the country were immoral or indecent, and classifying goods as immoral or indecent is the responsibility of Revenue Canada Customs and Excise. It is necessary for a ruling to be made by the latter agency respecting any pornographic matter whose forfeiture is sought under the *Customs Act*, even if the agency responsible for the initial seizure was the R.C.M.P.

Where the *Customs Act* is invoked, the R.C.M.P. prepares a "K 19, G.R.C." Seizure Form, upon which is recorded a description of the goods being held, along with any additional relevant information. Copies of the completed form are sent to Revenue Canada's Prohibited Importations Section, to R.C.M.P. National Headquarters to be placed on a national file, and, if required, to Division Headquarters. If the Prohibited Importations Section rules that the pornographic material in question falls within the meaning of the words "immoral or indecent", then the material becomes the property of the Crown (subject to an appeal to the Deputy Minister and thereafter to the courts). Alternately, if the material is ruled not to have been imported illegally, and no criminal (i.e., obscenity) charges are laid with respect to it, then it is returned to the owner or claimant.

It is also the case that charges are laid by the R.C.M.P. under the *Criminal Code* with respect to pornography initially seized under the *Customs Act*.<sup>10</sup> In non-contract Divisions, where the R.C.M.P. only provides federal policing, it is the agency's policy to refer cases involving substantial amounts of pornographic material to the police force with local jurisdiction for its decision whether or not to prosecute under the *Criminal Code*.<sup>11</sup> Should the force choose not to charge, the matter may be dealt with by the R.C.M.P. either by means of the *Criminal Code* or the *Customs Act*. In other jurisdictions, even



where forfeiture under the *Customs Act* fails because the Prohibited Importations Section rules that the material in question is not immoral or indecent, the case at hand does not necessarily terminate. Depending upon the circumstances involved (e.g., offering for sale, distribution, etc.), the R.C.M.P. may refer the case to the Attorney General of the province in which the pornographic matter was seized. In turn, the Attorney General may consider the material sufficiently objectionable to proceed under the *Criminal Code* provisions relating to obscenity.

R.C.M.P. National Headquarters, as a matter of policy, regards unlawfully imported pornography — especially child pornography — as a serious problem. As a result, Headquarters has established a separate catalogue listing all seizures of pornographic material; moreover, the R.C.M.P. has acted in co-operation with Revenue Canada in order to obtain access to Customs and Excise detention orders issued against pornographic matter. Information concerning these Customs seizures has been fed into R.C.M.P. computers. Thus, the R.C.M.P. constitutes perhaps the most comprehensive source of information in Canada with regard to the detention and forfeiture of smuggled child and adult pornography.

The R.C.M.P. derives considerable strength from co-operation with other law enforcement agencies, including local, municipal and provincial police forces as well as police forces in other countries. Co-ordination between the actions taken by the R.C.M.P. and those of other police forces inside Canada tends to maximize the efficacy of efforts to control the availability of unlawfully imported pornography. Information concerning individual seizures brought to the R.C.M.P.'s attention by local or provincial police generally results in the check of the suspected importer's, seller's or distributor's name against the R.C.M.P.'s computerized records. If the suspect's name appears one or more times in the records in connection with previous unlawful activities related to sexually explicit materials, either the R.C.M.P. or the local agency may consider that sufficient grounds have been established to conduct a more extensive investigation, including applying for a warrant to search the suspect's place of residence.

Co-operation of this kind aids in the development of optimally effective charging practices. When municipal or provincial police locate pornographic material smuggled into Canada, several courses of action are available to them. If they believe that the matter meets the legal test of obscenity, they may seize it or may lay charges under the *Criminal Code*. Where the local or provincial police feel that impugned material is insufficiently salacious to warrant an obscenity charge, they may contact a member of the R.C.M.P. who, in turn, may seize the material and charge under the *Customs Act* which, as a federal statute, is beyond the jurisdiction of the former agencies.

Where the material has been smuggled and distributed, sold or displayed, the local police and R.C.M.P. may charge simultaneously under the *Criminal Code* and the *Customs Act*. Typically, when this happens, the courts will deal first with the offences alleged under the *Code*. If the accused is convicted, any



charge(s) under the *Customs Act* will be withdrawn, but if the verdict is one of acquittal, it still is possible that the legal sanctions provided for under the *Customs Act* may be applied (e.g., where distribution, sale or public exposure have not adequately been proven, or where the material seized does not meet the legal test of obscenity, but is demonstrably immoral or indecent). Co-operation and information-sharing between local or provincial police and the R.C.M.P. may make it possible to determine, on the basis of all available evidence, which of these alternate courses of action is most appropriate in the circumstances.

## International Liaison

Co-operation between the R.C.M.P. and law enforcement agencies in other countries has proved rewarding as a means of strengthening the control exercised over the importation into Canada of obscene and immoral or indecent material. This co-operation manifests itself in the form of inter-agency information sharing, and is useful where foreign police departments seize the mailing lists of pornography producers and provide the R.C.M.P. with the names and addresses of Canadian subscribers appearing thereon.

In 1978 and early 1979, the United States Federal Bureau of Investigation (F.B.I.) conducted investigations of Falcon and All-American Studios, two San Francisco-based firms identified as leading producers and distributors of homosexual child pornography. The seized mailing list of All-American Studios contained over 5000 names and addresses, from about 30 countries, including Canada. The R.C.M.P. assisted the F.B.I. in its investigations by conducting a number of searches across Canada of the residences of listed customers. The Canadian subscribers on the list numbered 266; the geographic distribution of addresses was:<sup>12</sup>

Newfoundland	0	Manitoba	8
Prince Edward Island	1	Saskatchewan	11
Nova Scotia	5	Alberta	27
New Brunswick	4	British Columbia	32
Quebec	67	Yukon	0
Ontario	111	Northwest Territories	0

The Canadian addresses on the seized mailing list indicate that recipients of magazines from All-American Studios resided not only in major metropolitan areas, but also in smaller cities and towns, and even in numerous rural communities.

The R.C.M.P.'s legal authority to conduct searches in the All-American investigation derived from the fact that the products would be classified as immoral or indecent, and hence could be treated as smuggled goods. The investigations thus fell within the R.C.M.P.'s mandate of enforcing the *Customs Tariff* and the *Customs Act*. About 40 searches were executed across the Country by R.C.M.P. Customs and Excise officers in order to determine the

quantity of unlawfully imported material received by customers identified by the mailing list. Almost without exception, child pornography was found, sometimes in large quantities. The pornography either had originated in Europe, or came from the companies in San Francisco. Most of the subscribers had been unknown to Canadian authorities prior to the R.C.M.P.'s receipt of the Canadian mailing list from the F.B.I.

The following case study illustrates the value of co-operation between the R.C.M.P. and foreign enforcement services in discovering the identities of Canadian purchasers of child pornography.

The accused, a 34 year-old Edmonton grade four teacher, was investigated by R.C.M.P. Customs and Excise officers after they received notification from United States authorities that the accused was receiving child pornography by mail at his Edmonton address. The material was sent to the accused under an assumed name.

An R.C.M.P. search of the accused's residence uncovered more than 50 pieces of commercially produced child pornography valued at about \$1000. The accused was charged under the *Customs Tariff*. The investigating officers also found photographs of young girls apparently between 10 and 12 years of age, wearing school gym outfits. Three photographs were located that depicted a young girl in a nightgown; of these, one shot showed the girl reclining on a bed with one leg raised, and was focussed on the subject's genital area.

Further investigation conducted by Edmonton City Police raised suspicions that the accused had sexually assaulted three female children, of whom one was four years-old.

Before City Police could interview him, the accused committed suicide.

On the basis of the information assembled by the Committee, it appears that the use of customer mailing lists represents a more efficient method of discovering persons who illegally import pornography than the hit-and-miss process of border point Customs inspection and examination of mail. The latter two techniques require line officers to spot a relatively tiny amount of baggage or mail containing illegal importations amidst a huge volume of luggage, letters and parcels that conceal no illicit matter. Seized mailing lists instantly identify the persons whose use of the postal system may warrant official scrutiny. It appears that the existing practice is to conduct searches in a minority of cases where there is suspicion that pornography is being imported illegally. In the All-American investigation, for instance, one that involved the identification of a substantial volume of child pornography, only about 40 R.C.M.P. searches were conducted, representing approximately 15.0 per cent of the Canadian entries on the seized mailing list.

The Committee recognizes that care and discretion must be exercised by law enforcement officers before they undertake to search a private citizen's home or place of business. Certain fundamental safeguards have been enacted to prevent any abuse of police authority in conducting searches. A police officer investigating a suspected *Criminal Code* offence cannot obtain a warrant to search a certain building, receptacle or place unless he or she complies with



section 443(1) of the *Code* by satisfying a justice that there is a reasonable ground to believe that the place in question contains:

- Anything upon or in respect of which an offence against the *Code* has been or is suspected to have been committed,
- Anything that there is reasonable ground to believe will afford evidence with respect to an offence against the *Code*, or
- Anything that there is reasonable ground to believe is intended to be used for the purpose of committing any offence against the person for which a person may be arrested without warrant.

Also, section 8 of The *Canadian Charter of Rights and Freedoms* provides that "Everyone has the right to be secure against unreasonable search and seizure".

In the Committee's judgment, and considering the results of the searches conducted in the All-American investigation, it would seem that an aggressive search and seizure policy is warranted, wherever circumstances render such techniques an effective means of strengthening legitimate enforcement practices. Where foreign police provide the R.C.M.P. with subscriber mailing lists, and especially where child pornography is involved, the circumstances do exist to justify thorough investigations, including searches. In this regard, the R.C.M.P. could make it known publicly that it was actively seeking the co-operation of foreign enforcement agencies in obtaining mailing lists, and that it intended to conduct a rigorous investigation of any suspected case of unlawful postal importation of child pornography discovered through such contacts. The prospect of being discovered, of having one's residence searched, and of facing the real possibility of prosecution and conviction, would likely serve to dissuade a significant number of persons from sending for child pornography through the mail.

Canadian authorities should also actively seek out the mailing lists of all major commercial producers and distributors of child pornography. It is significant that Canadian authorities appear never to have received customer lists from the significant national sources of child pornography; it is unclear whether this fact is attributable to a lack of enforcement or an unco-operative attitude on the part of authorities in other nations, or to a failure by Canadian enforcers to take an active role in requesting that foreign police agencies supply them with seized customer lists.

## Provincially and Municipally Contracted Services

As already noted, the R.C.M.P. is charged with enforcement of the *Criminal Code*, and in many communities may be the chief agency providing such enforcement service. Thus, the R.C.M.P.'s mandate includes laying charges under those sections of the *Criminal Code* that concern obscenity. Where obscene matter is domestically produced or is mailed, kept for purposes of distribution or circulation or is sold, exposed to public view or possessed for any such purpose, the R.C.M.P. may charge under the *Code*.



In contract jurisdictions, the R.C.M.P. provides municipal or provincial police service, or both. In these jurisdictions, R.C.M.P. officers are called upon to enforce provincial statutes and even municipal by-laws. In the six contract provinces in which film classification or regulatory boards have been established pursuant to provincial legislation, the R.C.M.P. are the enforcement agency laying charges for such violations as exhibiting a film without first submitting it to the board for approval or failing to display a film's rating outside a theatre in the manner prescribed by statute or by the board.

In its contracted role as a municipal police force, the R.C.M.P.'s mandate includes charging for infractions against by-laws designed to restrict the accessibility of sexually explicit materials to children. The only by-laws of this kind of which the Committee has learned, are those passed by municipalities where the R.C.M.P. does not provide contracted service. The R.C.M.P., however, would have authorization to enforce the Victoria, British Columbia by-law that prohibits the sale or lease of certain pornographic video cassettes, videotapes or films.

## Other Law Enforcement Agencies

### Jurisdiction

The role of local, municipal and provincial police, referred to here as local police forces, in the control of pornography is reviewed briefly, since a number of salient aspects of this role have been alluded to already. These local police forces operate under the authority of the provincial Attorneys General. Their jurisdiction permits them to enforce the *Criminal Code*, provincial statutes and municipal by-laws (in the case of municipal police, only the by-laws of their own municipality), but not federal legislation such as the *Customs Tariff* or the *Customs Act*. Thus, the primary instruments available to local police forces for dealing with sexually explicit materials are the *Criminal Code* provisions relating to obscenity.

Using only the *Criminal Code* restricts the range and number of situations in which local police forces are able to act against pornography in magazine and print form. First, the material with respect to which these agencies are able to lay charges must meet the legal standard of obscenity; it is insufficient for the depictions in question merely to be immoral or indecent. Second, importation of pornographic matter in contravention of the *Customs Tariff* and the *Customs Act* does not in itself warrant the direct intervention of local police forces. Even if obscene matter has been smuggled successfully into Canada for private consumption rather than for publication, distribution, circulation, sale or public exposure, charging or seizure under the *Code* are inappropriate courses of action. In such circumstances, the only option open to local law enforcers is to refer the case to the R.C.M.P. or Revenue Canada Customs and Excise for disposition under section 205 of the *Customs Act*. Similarly, if illegally imported matter is discovered that is only considered to be immoral or

indecent, local law enforcement agencies may contact the R.C.M.P. or Revenue Canada. The effectiveness of local police in controlling much of the pornography that enters Canada is largely contingent upon the nature of the co-operative liaison developed with the R.C.M.P.

## Provincial Policies and Guidelines

Another factor impinging upon the role of local police forces in controlling pornography is the nature of the provincial law enforcement policy determined by the Attorneys General. Contacts made between the Committee and police departments in most of Canada's major cities revealed that these policies of enforcement varied widely from province to province. In two provinces, British Columbia and Quebec, the Attorneys General have issued guidelines setting forth the types of depictions and other materials with respect to which obscenity prosecutions or seizure procedures may be instituted. In Alberta, informal guidelines are followed. Police officers and agencies are expected to comply with these provincial guidelines since the Attorney Generals have the authority to stay any proceedings under the *Criminal Code* of which they disapprove. The guidelines are:

***British Columbia Guidelines for Enforcement of the Obscenity Provisions, Criminal Code of Canada (1978)***

Prosecutions for material classified as "obscene" under the *Criminal Code* of Canada are subject to the following guidelines:

- A. The following categories of obscenity are considered to clearly contravene community standards and may be the subject of prosecutions:
  - 1. Material which depicts sexual acts coupled with acts of violence (including sadism, masochism and other similar acts).
  - 2. Material which depicts acts of bestiality.
  - 3. Material which depicts juveniles involved in sexual activities. *Violence is not a factor to be considered in this context.*
- B. With respect to material recognized as "hardcore" and not covered by the criteria set out above, the following guidelines are applicable:
  - 1. Material in this category shall not be sold or displayed to juveniles.
  - 2. Material in this category may be sold in establishments designed for the purpose. Such establishments *shall* prevent the display of this material to public view from outside the establishment.
  - 3. Juveniles shall not be permitted access to these establishments.

Should the guidelines in this category be breached, prosecutions may be taken.

- C. With respect to material recognized as "softcore", being the sort of material generally sold in news and magazine stands, corner grocery stores, and drug stores, the following guidelines are applicable:
  - 1. Such material shall not be accessible to juveniles.

2. The giving of advice to police as to whether or not such material is "obscene" is the responsibility of Crown Counsel.
3. In the case of material recognized as "softcore", where Crown Counsel forms the opinion that the material is legally obscene, "*in rem*" proceedings pursuant to section 160 C.C. is the preferred course of action. However, where continued violations of these guidelines occur, Crown Counsel are to proceed with prosecutions under section 159 C.C.

For the purposes of these guidelines, "juvenile" means any person under the age of 17 years.

The issue of obscene material is of concern to both retailers and distributors. The co-operation of these businessmen has been sought to ensure that in premises to which juveniles have access, such material is sold from behind the counter or is not accessible to them.

It is expected that retail sellers of "softcore" material will attempt to comply with the spirit of the Guidelines by ensuring non-availability of "softcore" material to juveniles. However, it must be recognized that prosecutions cannot proceed unless the material is deemed legally obscene. The responsibility of ensuring that no legally obscene material is on the shelves rests with the retailer and distributor.

The police must not exercise their powers under Category "C" for the purpose of prohibiting the sale of "girlie" or adult magazines in this category without first determining the legal question of obscenity.

#### ***Quebec Guidelines Concerning Pornographic Newspapers and Magazines (1977)***

We will divide these categories of magazines and newspapers into three sections to better determine in which cases we should proceed with legal action:

- A. The categories of obscenities mentioned hereafter are considered as an evident violation of traditional values and morals of society that can take the following form.
  1. All publications that contain pictures of sexual acts accompanied with violence (including sadism, masochism and other acts of the same nature).
  2. All publications that contain pictures of bestiality.
  3. All publications that contain pictures of sexual acts involving children.
- B. Hardcore publications not mentioned above:
  1. These publications cannot be sold to minors nor can they be accessible to them.
  2. These magazines in certain establishments must be wrapped in a fashion that prohibits examination. These business establishments must ensure that the racks containing this material are not in the public view in the store.
- C. Publications known as "softcore" [that is pornographic but acceptable by a good portion of the population]. These publications must not be sold nor can be accessible to children less than 14 years of age.

Protection of the minors is our main concern.



We are counting on the collaboration of all businesses, in order to achieve the goals we afix.

You are asked to note that we must prohibit completely the access of minors to specialty shops known as "Sex Shops".

The official provincial guidelines for Quebec and British Columbia set restrictive limits on the classes of material considered sufficiently offensive to warrant the intervention of the criminal process. Under the guidelines, a few general types of magazines are specified as suitable subjects for prosecution, including those depicting acts of bestiality, and those that present children and juveniles involved in sexual activities. Since the latter classes of material are generally not commercially available within Canada, the number of proceedings against sexually explicit material undertaken by local law enforcers could be expected to be small in jurisdictions where such guidelines have been implemented.

The enforcement experience in this regard varies widely, indicating that the setting of provincial guidelines is not by itself synonymous with their actually being implemented. Between 1979 and 1982, 109 charges were laid under sections 159 to 164 of the *Criminal Code* by the Montreal Police Force and 17 cases came before the Court of Sessions.<sup>13</sup> In contrast, it was reported to the Committee that only one obscenity prosecution had been commenced in Vancouver during the four and a half year period ending in April, 1982 during which that province's guidelines had been in effect. The enforcement record of the latter city stands in stark contrast to that of Montreal (109 charges between 1979 and 1982) and that of Metropolitan Toronto, where 101 obscenity charges were lodged under section 159(1) of the *Code* between January 1 and November 30, 1982.<sup>14</sup> There are no provincial guidelines in Ontario.<sup>15</sup>

**The evidence suggests that the issuing or non-issuing of provincial guidelines may have little bearing upon actual enforcement practices. Rather, the evidence indicates that it is provincial policy that plays a decisive role in determining whether the obscenity provisions of the *Criminal Code* are relatively tightly enforced or whether, comparatively, a *laissez-faire* stance prevails with respect to the distribution, sale and display of sexually explicit matter.<sup>16</sup>**

Provincial policy may impinge upon the enforcement of the obscenity laws, as for instance, in jurisdictions where police officers are required to consult either with a Crown Attorney or with an agent of the Attorney General before acting against any allegedly obscene matter. In these jurisdictions, the decision whether to initiate proceedings is taken out of the hands of the police.

In the Committee's view, the policies of the provincial Attorneys General with respect to obscenity prosecutions may impinge upon the practices of other agencies involved in regulating pornography. In some instances, this impact results in *de facto* compliance with an Attorney General's policy, even when the agencies in question have federal jurisdiction. In several provinces, Customs

officials contacted by the Committee reported having encountered problems as a result of the Attorney General's position. In addition, R.C.M.P.-initiated obscenity prosecutions, both in contract and non-contract provinces, may be stayed by order of the Attorney General.

## Enforcement Practices

In certain provinces, the police are directed not to take action unless they receive complaints from the public concerning pornographic matter being offered for sale. This practice makes enforcement a hit-and-miss affair that depends on chance — that is, on certain sexually explicit materials being seen by a person vocal enough, aware enough, or with moral sensibilities, to lodge a complaint. Where this practice has been adopted, it assures that inconsistencies in enforcement result, reflecting the inconsistencies between complaints lodged in different provinces, or even in different municipalities within a province. In one province, a policy has evolved of focussing law enforcement attention primarily on complaints received in writing; in the province in question, it is expected that complainants will be prepared to testify in any legal proceedings concerning the pornographic matter about which the complaint was made.

In another province, the Attorney General has issued instructions preventing the police from intervening before a publication has gone into public distribution. The principle underlying this policy is that government should not act as a censor of printed matter. A policy of this kind is calculated to induce periodical distributors to exercise caution in deciding which magazine titles to carry; since the provincial government and police do not provide guidance concerning what material is acceptable and what is not, the distributors may adopt relatively conservative practices in order to avoid the risk of unexpected prosecutions and seizures.

The control of pornography by local law enforcers is also affected by the departmental policies of individual police forces. Police manpower resources, the local occurrence of other, higher priority offences (e.g., violent crime) and the perceived extent of community concern with pornography influence whether the obscenity provisions of the *Criminal Code* are enforced with rigour or laxity. Departmental adoption of standardized procedures may affect the role of the local police in regulating the display and accessibility of sexually explicit publications. In several urban jurisdictions, for instance, police forces have adopted a so-called “walk-around” procedure, that involves having officers informally inspect the magazine racks of convenience stores, newsstands and other retailers. If pornographic magazines are prominently displayed, or are placed within the reach or field of view of children, the officer advises the proprietor to alter the display.

The “walk-around” policy poses problems related to the ambit of section 159(2) of the *Code*. Under this subsection, public display and sale of sexually explicit matter are proscribed only where the material in question meets the legal test of obscenity. Where obscene material is being sold, the police practice



of cautioning a proprietor may serve as an effective means, should a prosecution ensue, by which to deprive him or her of the defense that he or she was unaware of the nature or contents of the material being sold.

It is unquestionably the case, however, that much printed matter that does not meet the test of obscenity is unsuitable for open display in places where it is accessible to children and youths. Therefore, while police officers may advise or even warn retailers to display so-called "soft-core" pornography discreetly, they have no legal means by which to enforce standards of accessibility. In practical terms, the "walk-around" procedure amounts to a policy of informal cautioning that takes advantage of the retailer's presumed unfamiliarity with the law. In most instances, this policy fulfills its purpose; an (unenforceable) warning from a uniformed police officer often suffices to persuade store owners to reorganize their magazine racks. The possibility remains, however, that retailers may ignore the warnings, in which case, the police have no legal recourse. Alternately, the store owner may regard the warning as a threat or intimidation, and may challenge the authority of the police so to conduct themselves. The prospect of such a challenge has been a matter of sufficient concern in one province to cause the Attorney General's regional agent to instruct police departments not to advise retailers concerning the display of pornography.

Another factor potentially affecting local enforcement of the obscenity-related sections of the *Criminal Code* is the existence or non-existence within particular police forces of specialized squads dealing exclusively with sexual offences, or only with pornography (the only example of the latter being Project "P" jointly operated by the Metropolitan Toronto Police Force and the Ontario Provincial Police). Members of such squads gain specialized experience and expertise in their area of enforcement, and possess a greater awareness than non-specialized officers, of the law of obscenity, of methods of distribution, sale and display, of appropriate investigative techniques, and of the sort of material whose seizures is most likely to be upheld by the courts.

In eight provinces, local police forces are also responsible for enforcement of the provincial statutes enacted to regulate the exhibition of motion pictures. The local police are empowered to lay charges where provisions of these Acts are contravened, or where exhibitors or distributors fail to comply with certain decisions of the film classification or censor boards.

Finally, reference must be made to the role of local police in enforcing municipal by-laws designed to regulate the conditions under which retailers purvey sexually explicit materials to the public. In municipalities where such legislation has been passed, the police are empowered to play a direct role in enforcing certain standards for the accessibility to children and the display of pornographic merchandise. (The legal ramifications and problems associated with the accessibility by-laws are discussed in Chapter 49).



# Summary

In its review of Canadian enforcement practices of various statutory provisions enacted for the purpose of controlling sexually explicit and obscene materials (including child pornography), the Committee identified the following problems.

In relation to the operation of mandate assigned to the Customs and Excise Division of Revenue Canada, concerning the importation of pornography, it was found that:

1. Imprecise and undefined terms are used in guidelines to describe and differentiate items that are admissible or inadmissible.
2. The need for Commodity Specialists to receive more specific training to acquaint them with leading judicial decisions, with the distinctions in law between indecency or immorality and obscenity, and with the methods and problems of various enforcement agencies.
3. The decentralization of the authority to prohibit the entry of goods coupled with the issuance to line officers of imprecise, non-specific guidelines affords them wide discretionary powers, and places heavy reliance on their subjective judgment.
4. The inaccessibility to Customs officers of the list of prohibited publications issued by the Prohibited Importations Section.
5. The failure of the Prohibited Importations Section to organize its listing alphabetically.
6. The failure to use the list as a set of directives to assure nation-wide uniformity of enforcement.
7. The large volume of incoming foreign mail that Customs inspectors at I.M.U.s must examine.
8. The culling out and general non-inspection of first class mail.
9. The incompleteness and variable quality of the information stored in the computerized file system maintained by Revenue Canada Customs and Excise Headquarters.

In relation to the work of the R.C.M.P. Customs and Excise Section, it was found that:

10. There has been limited use of the mailing lists of child pornography subscribers seized by foreign enforcement services as a means of discovering persons who illegally import child pornography into Canada.
11. Canadian enforcement authorities do not appear to have actively contacted the police forces in nations which are significant sources of child pornography with respect to convictions against producers and distributors or the obtaining of seized mailing lists.

In relation to the enforcement practices concerning the distribution and sale of pornography by provincial and municipal police forces, it was found that:

12. Enforcement policies vary widely across Canada.
13. Where provincial guidelines with respect to the enforcement of obscenity provisions of the *Criminal Code* have been established, their application has had highly variable consequences.
14. Provincial policies may affect the operation of agencies having federal jurisdiction.
15. A number of informally adopted enforcement practices have evolved which have made the operation of the obscenity provisions in the *Criminal Code* a hit-and-miss affair, and which in certain instances, are legally unenforceable.
16. Few police forces across Canada have specialized units dealing exclusively with sexual offences or the control of obscene and pornographic matter.

## References

### Chapter 50: Enforcement Practice

- <sup>1</sup> Rompkey, William H., *Communique: To All Members of Parliament and Senators*, Ottawa, May 7, 1980, p. 2.
- <sup>2</sup> Revenue Canada Customs and Excise, *Instructions to Port Officers*, Ottawa, February 20, 1976 (Revised October 6, 1977), pp. 7-8.
- <sup>3</sup> *Customs Control of Imported Publications* (Document No. 1), (Ottawa, 21 April 1965).
- <sup>4</sup> *Ibid.*, p. 8.
- <sup>5</sup> S.C. 1980-81, c.C-54.
- <sup>6</sup> *Canada Post Office/Customs Instructions for the Routing and Primary Customs Screening of International Mail*, pp. 2-3.
- <sup>7</sup> R.S.C. 1970, c.R-9, ss. 7(4), 17(3).
- <sup>8</sup> Letter and memorandum received by the Committee from R.R. Schramm, Assistant Commissioner, Director, R.C.M.P. Criminal Investigation, Ottawa. Letter dated February 18, 1983.
- <sup>9</sup> R.S.C. 1970, c.R-9, s. 17(4).
- <sup>10</sup> Letter from R.R. Schramm (*supra*, note 8).
- <sup>11</sup> *Ibid.*
- <sup>12</sup> Information concerning the Falcon and All-American investigations was provided to the Committee by Special Agent T. Jenkins, United States Federal Bureau of Investigation, Organized Crime Squad, San Francisco.
- <sup>13</sup> Letter and memorandum received by the Committee from Monsieur Remi Bouchard, Associate Deputy Minister, Quebec Ministry of Justice, dated August 19, 1983.
- <sup>14</sup> Letter by Staff-Inspector Forbes-Ewing, Metropolitan Toronto Police Force, dated December 3, 1982, quoted in a memorandum issued by the *Metropolitan Toronto Licensing Commission*, dated December 10, 1982.
- <sup>15</sup> The Ontario Provincial Police and the Metropolitan Toronto Police Force jointly maintain a special anti-pornography squad, Project "P". The role of this squad constitutes a major factor in Ontario's high incidence of charging under the obscenity-related provisions of the *Criminal Code*.
- <sup>16</sup> The Committee attempted to compile a comprehensive listing of the numbers of obscenity prosecutions undertaken by each province over a period of years. Such a listing would have illustrated the practical consequences of provincial policies with respect to enforcement of the obscenity provisions of the *Criminal Code*. The only reliable source of data for the proposed compendium would have been provincial justice statistics; most of the provinces were unable to supply the Committee with such statistics.





## Chapter 51

# Importation and Seizure

In Chapter 50, *Enforcement Practice*, a review was given of the organization and operation of enforcement practices in relation to the obscenity provision in the *Criminal Code*. In this chapter, the statutes relating to the unlawful importation and seizure of unauthorized goods into Canada are reviewed and research findings are presented in relation to 26,357 seizures of obscene and pornographic matter, including child pornography between 1979 and 1981. This extensive source of information assembled by the Committee provides a basis upon which to assess the amount of child pornography known to enforcement authorities which persons have illegally attempted to bring into the country.

## Unlawful Importation

Section 14 of the *Customs Tariff* prohibits the importation into Canada of any goods enumerated, described or referred to in Schedule C of the Act and authorizes forfeiture to the Crown of any such goods. Tariff Item 99201-1 of Schedule C lists the following as goods prohibited entry:

Books, printed paper, drawings, printings, prints, photographs or representations of any kind of a treasonable or seditious or of an *immoral or indecent* character.<sup>1</sup>

Canadian courts have enunciated a number of general principles concerning the unlawful importation of "immoral or indecent" materials. The test concerning whether imported material is "immoral or indecent" under Schedule C of the *Customs Tariff* is whether the material goes beyond what the contemporary Canadian community is prepared to tolerate. In this respect, it is similar to the "community standards" test in prosecutions for obscenity under the *Criminal Code*.<sup>2</sup> The words "immoral or indecent" in Tariff Item 99201-1 are not synonymous with the word "obscene" in section 159(8) of the *Criminal Code*. A publication may be considered "immoral or indecent", notwithstanding that it might not be considered "obscene" under the *Criminal Code*.<sup>3</sup>

The contemporary Canadian community is arguably less tolerant concerning the depiction of overt homosexual acts than that involving similar acts committed between persons of opposite sexes. Magazines which depict full frontal nudity of males do not fall within the prohibition. But magazines depicting homosexual acts between two persons are prohibited notwithstanding that, were the persons of opposite sexes, the magazines might well fall outside the prohibition. Magazines which depict acts of bondage, cruelty, sadism or masturbation, and which advertise male prostitutes accompanied by pictures of their genitals, are clearly of an immoral or indecent character.<sup>4</sup>

There is no onus on the Crown to adduce evidence of prevailing community standards of tolerance concerning the publications in question.<sup>5</sup> That the same publications were previously imported without difficulty does not preclude the authorities from invoking the Tariff Item 99201-1. Past tolerance or negligence by customs officials is not a bar to subsequent proceedings.<sup>6</sup>

In respect of prohibited importations, the *Canada Post Corporation Act* and the *Customs Tariff* operate in conjunction. Since the *Customs Tariff* prohibits the importation into Canada of "immoral or indecent" representations, whether by mail or otherwise, section 40(1) of the *Canada Post Corporation Act* requires any mail from outside of Canada suspected to contain such representations to be submitted to a customs officer for examination. Under section 40(2) of that Act, the customs officer is authorized to open any such mail, other than a letter. If the mail is found to contain an indecent or immoral representation, the customs office is authorized to seize it under section 14 of the *Customs Tariff*. Where a letter is directed to the customs officer pursuant to section 40(1) of the *Canada Post Corporation Act*, the officer is authorized<sup>7</sup> to cause the letter to be opened by the addressee, or, with the addressee's written permission, to open it himself. If the letter is found to contain an immoral or indecent representation, it is subject to seizure and forfeiture under the *Customs Tariff*. If the addressee cannot be found, or refuses to open the letter, the Canada Post Corporation will treat the letter as undeliverable mail.<sup>8</sup>

## Seizure

Whereas section 14 of the *Customs Tariff* prohibits the importation of certain goods and authorizes seizure and forfeiture of them when discovered during the importation process, section 205(1) of the *Customs Act* authorizes the seizure and forfeiture of unlawfully imported goods generally. Accordingly, where the unlawful importation of goods has escaped detection, such goods are nonetheless subject to seizure and forfeiture if found anywhere in Canada. Section 205(1) provides:

205.(1) If any person, whether the owner or not, without lawful excuse, the proof of which shall be on the person accused, has in possession, harbours, keeps, conceals, purchases, sells or exchanges any goods unlawfully imported into Canada, whether such goods are dutiable or not, or whereon the duties lawfully payable have not been paid, such goods, if found, shall be seized and



forfeited without power of remission, and if such goods are not found, the person so offending shall forfeit the value thereof without power of remission.

Further, section 248(1) of the *Customs Act* places on the accused the burden of proving lawful importation, subject to the Crown leading evidence to show that the accused had some knowledge, or means of knowledge, concerning the circumstances of importation.<sup>9</sup>

The *Customs Act* also provides for the issuance of “writs of assistance” (which are search warrants in continual effect) pursuant to the investigation of crimes suspected to have been committed against the Act.<sup>10</sup>

## Case Studies

The first of the case studies that follow provides an example of the kind of situation in which charging under section 205 of the *Customs Act* is appropriate. The second and third case studies illustrate the practical enforcement consequences of the distinction between the meanings of the terms “obscenity” and “immoral or indecent”.

### *Case Study 1 (R. v. Havelock)*<sup>11</sup>

In June, 1972, the accused attempted to bring seven boxes containing 700 pornographic magazines into Canada without declaring them to Customs. The magazines were discovered by customs inspectors at Emerson Manitoba, concealed in a trailer truck loaded with 1,800 cases of cucumbers. The accused, who was driving the truck, declared the cucumbers but made no mention of the boxes of magazines. When the customs officers found the magazines, they estimated their values (ranging from 25¢ to \$10 apiece), according to the prices marked on the covers. The accused was charged with possession of illegally imported goods of value greater than \$200, contrary to section 205(3) of the *Customs Act*. The accused was convicted at trial, and launched an appeal, which was dismissed by the Manitoba Court of Appeal.

### *Case Study 2*

In Ontario, the June, 1980 issue of *Penthouse* magazine was the subject of public complaints and of complaints from several municipal police forces. After an Ottawa Crown Attorney recommended that charges be laid against the magazine's Toronto distributor, Project “P” searched the company's premises. The company and its president were charged with distributing obscene matter under section 159(1)(a) of the *Code*. Five thousand copies of the impugned issue were seized.

The issue of *Penthouse* in question contained a photographic layout featuring two young girls in the nude near a horse (i.e., suggestions of bestiality), as well as depictions of bondage, mutilation and lesbian acts.

The accused company and individual were tried in Provincial Court in Ottawa. The corporate accused pleaded guilty and received a \$500.00 fine, while the charge against the individual was withdrawn. The 5000 magazines seized were forfeited to the Crown. (In a separate county court case, a seizure order under section 160 of the *Code* was granted with respect to the same

issue of *Penthouse*. The judge found the photographic content of the magazine obscene but stated, *obiter*, that sexually explicit language describing fellatio, anal intercourse and cunnilingus, was not obscene.)

Revenue Canada Customs and Excise did not rule the June, 1980 issue of *Penthouse* to be immoral or indecent, and permitted its importation into Canada. The issue had been placed on the Ontario Advisory Council's "with reservations" list; several prominent retailers had refused to carry the magazine.

### *Case Study 3*

The September, 1977 issue of *Penthouse* magazine contained photographs depicting lesbian sexual activities between two females who appeared to be under the age of 18. The two models had freckled faces, youthful hair styles and ribbons in their hair, and were shown wearing leotards and tutus. The acts performed by the models included: touching tongues; squeezing and holding each other's breasts; embracing and fondling; sucking each other's nipples; exposing genitals (from the rear); touching each other's genital areas; and one female placing her face against the other's buttocks. As later attested by sworn depositions, the models were actually 19 and 20 years of age.

In the opinion of the Attorney General of Ontario and officers at Project "P", the magazine was obscene by reason of the layout described. Revenue Canada Customs and Excise received notification accordingly and immediately telexed all border Customs ports, instructing them to prevent the issue from entering Canada, pending a final ruling by the Prohibited Importations Section. A few days later, however, six tractor trailer-loads of the magazines were permitted entry into Ontario.

In order to prevent these inadvertently admitted magazines from being distributed, it was decided to seize these copies under section 160 of the *Criminal Code*. After obtaining the necessary warrant of seizure, Project "P" took possession of 85,000 copies of the magazines.

Following the Project "P" seizure, the Prohibited Importations Section ruled that the September, 1977 issue of *Penthouse* was *not* immoral or indecent, and hence, could not be denied entry into Canada. Over 500,000 copies seized by Revenue Canada were released, while Project "P" still retained possession of the 85,000 copies.

The Ontario Advisory Council recommended that Ontario distributors should not handle the released copies, but one company apparently did seek to distribute them.

At the show cause hearing held in county court pursuant to the seizures under section 160, the 85,000 magazines were found obscene and ordered forfeited to the Crown. The forfeiture was upheld by the Ontario Court of Appeal, and leave to appeal to the Supreme Court of Canada was denied in 1979. The 85,000 copies were destroyed in April, 1979.

## National Survey of Seizures: 1979-81

As noted in Chapter 50, *Enforcement Practice*, complete information in an aggregated form does not exist for Canada in relation to seizures of illegally imported immoral or indecent materials. This fact underscores the problem in

the existing mechanisms for the collection and storage of information concerning seizures of sexually explicit matter. These problems include:

1. The absence of a single, comprehensive source of information.
2. Incomplete or insufficient information being entered in the computerized files of Revenue Canada Customs and Excise.
3. The failure of many District Offices of Revenue Canada Customs and Excise to contribute information to Ottawa.
4. The duplication of entries in the computerized files.
5. The incorporation by R.C.M.P. Customs and Excise Headquarters into its own central, computerized file system of the incomplete computerized file maintained by Revenue Canada Customs and Excise.

In order to obtain information about the importation of immoral or indecent materials, including child pornography, the Committee conducted a survey that involved:

1. Visits to all Regional Customs Offices where a manual search of the seizure files was undertaken of records from 1979 to 1981.
2. Information derived from the central computerized file systems of the R.C.M.P. Customs and Excise Section and the Revenue Canada Customs and Excise Division.

This information was transferred to a standard research protocol developed for the purpose of identifying the types of materials seized and specifying the volume of different types of child pornographic matter.

Insofar as the Committee is aware, the information obtained on 26,357 seizures represents the first time that an attempt has been made to ground conclusions concerning the importation of pornography into Canada on empirical evidence derived from the records of the relevant national enforcement agencies. The Committee acknowledges the co-operation of the R.C.M.P. and Revenue Canada in making available their records for analysis. The information obtained permits detailed documentation concerning the quality, type and regional distribution of pornographic material detected in the process of being brought into the country illegally. The findings presented are based on seizures by the R.C.M.P. and Revenue Canada Customs and Excise, rather than those made by local and provincial police forces. Thus, information concerning charges under Section 159 or Section 164, and (for the most part) seizures under Section 160 of the *Criminal Code*, is not provided here.

Of special interest to the Committee was the opportunity to obtain information concerning seizures of child pornography. Since the available Customs and R.C.M.P. records often list only the titles of publications seized, identifying such matter as child pornography posed a special problem. This difficulty was surmounted with the assistance of an officer seconded from Project "P". This officer, a specialist with long experience in those areas of law enforcement



involving pornography, was able to identify which of the seized materials were child pornography by examining the listed titles. The only titles identified as child pornography were those with which the officer was directly familiar as a result of his work with Project "P". Titles which on their face appeared to have some association with children or youths, but of which the officer had no first-hand knowledge, were assumed not to be true child pornography. Only materials featuring actual children or youths were classified as child pornography, and thus the class of material referred to as pseudo-child pornography was excluded. In practice, there is usually a clearcut demarcation in the depiction of children and that of adults in most types of pornography. Where there was doubt, the materials were assigned to the adult category.

In order to preclude information being obtained about enforcement practices for a single, and possibly, exceptional year, findings were assembled for the three year period from 1979 to 1981.

## All Seizures of Pornography: 1979-81

The findings given in Table 51.1 represent the total *number of seizures* for the three year period rather than the *number of items per seizure*. In an individual seizure, one, a few, dozens, hundreds or thousands of items may have been involved; these findings are given in subsequently presented tables.

Between 1979 and 1981, 1.10 seizures of pornography were made for every 1000 Canadians. On average, only 0.37 seizures were made for every 1000 persons in each of 1979, 1980 and 1981. Because the information obtained by the Committee is unique, there is no comparative basis upon which to calibrate these results. In the Committee's judgment derived from its findings on the distribution and accessibility of pornography across Canada and the results of the National Population Survey (see Chapter 54), the volume of seizures is indeed small. The findings suggest that:

1. Not much pornography is entering the country illegally; or
2. Much more pornography enters the country illegally than is detected and seized (i.e., that the enforcement system is porous).

A review of the regional variations indicates that the second possibility is more likely, namely, that extensively more pornography is illegally brought into Canada than the relatively small amount being detected by enforcement authorities.

The results given in Table 51.1 indicate that the rate of seizures of all forms of pornography (i.e., the number of seizures per 1,000 persons) varies by region and generally tends to increase from east-to-west. This phenomenon may be attributable to: variations in the relative number of persons in different regions who purchase matter of this kind; regional differences in the volume of pornography purchased by the average user; or variations in the types of pornography most commonly purchased in different parts of the country. Patterns

**Table 51.1**

**Seizures of Sexually Explicit Material, 1979-81:  
by Province of Seizure and  
Numbers of Seizures per 1000 Persons**

Province	Total Seizures	1980 Canadian Population (in 1000's)	Seizures per 1000 Persons
Newfoundland	349	579.6	0.60
Prince Edward Island	8	124.4	0.06
Nova Scotia	670	852.8	0.79
New Brunswick	581	707.6	0.82
Quebec	3,231	6,312.0	0.51
Ontario	9,149	8,574.4	1.07
Manitoba	2,534	1,029.5	2.46
Saskatchewan	2,115	970.1	2.18
Alberta	4,670	2,081.4	2.24
British Columbia	3,041	2,640.1	1.15
Northwest Territories	8	43.0	0.19
Yukon Territory	1	21.4	0.05
<b>TOTAL</b>	<b>26,357</b>	<b>23,936.3</b>	<b>1.10</b>

*National Survey of Seizures.* Information from Revenue Canada Customs and Excise (61.3 per cent) and R.C.M.P. Customs and Excise (38.7 per cent).

of this kind may also be explicable in terms of regional economic variations (i.e., in poorer areas, fewer persons may have sufficient disposable income to indulge in such "luxury" items as adult magazines and books). The findings from the Audit Bureau of Circulation (see Chapter 54)) indicate the existence of an east-to-west gradient in the demand for pornographic magazines.

The regional differences noted may result entirely or in part from variations in the effectiveness of enforcement at preventing immoral or indecent matter from entering the country. In this regard, the relative seizure record of Manitoba between 1979 and 1981 was the most impressive of any province. This fact may, in part, result from the innovative methods that have been implemented at Winnipeg's International Mail Unit (see Chapter 50). It is likely that the success achieved at this one location was sufficient to inflate the figures for all of Manitoba, making it Canada's leader at intercepting illegally imported pornography.

Until more complete and compelling evidence is available than that assembled, the Committee concludes that alterations in existing enforcement

practices, such as those implemented for Manitoba, would result in the detection of a considerably higher volume of illegally imported pornography into Canada.

## Seizures of Child Pornography: 1979-81

In some circles, it has been suggested that the availability and importation of child pornography have reached epidemic proportions in Canada. In relation to the latter concern, the findings given in Table 51.2 do not support this claim. **Of 26,357 seizures between 1979 and 1981, a total of 330, or 1.3 per cent, were adjudged to be child pornographic matter. On the basis of known materials seized, it is evident that child pornography constitutes a tiny proportion of all pornography entering Canada unlawfully.**

Table 51.2

### Seizures of Child Pornography, 1979-81: by Province of Seizure and Numbers of Seizures per 1000 Persons

Province	Total Seizures	1980 Canadian Population (in 1000's)	Seizures per 1000 Persons
Newfoundland	4	579.6	0.0069
Prince Edward Island	0	124.4	—
Nova Scotia	9	852.8	0.0105
New Brunswick	7	707.6	0.0098
Quebec	146	6,312.0	0.0231
Ontario	73	8,574.4	0.0085
Manitoba	26	1,029.5	0.0252
Saskatchewan	7	970.1	0.0072
Alberta	28	2,081.4	0.0135
British Columbia	30	2,640.1	0.0113
Northwest Territories	0	43.0	—
Yukon Territory	0	21.4	—
TOTAL	330	23,936.3	0.0138

*National Survey of Seizures.* Proportion of seizures per agency were: Revenue Canada Customs and Excise (81.5 per cent) and R.C.M.P. Customs and Excise (18.5 per cent).

The child pornography seizure rates listed in Table 51.2 provide a far less clear picture of an east-to-west gradient in the relative numbers of seizures. Quebec, for instance, has one of the lowest seizure rates listed in Table 51.1, but the second highest rate listed in Table 51.2. For Saskatchewan, precisely



the opposite is true; that province has one of the highest rates listed in Table 51.1, but the second lowest in Table 51.2. The muddled picture of regional variations afforded by Table 51.2 is likely a factor of the small number of child pornography seizures that occurred in the three year period.

Of the possible sources of supply other than importation, domestic commercial production, distribution and sale are ruled out on the basis of the findings given in Chapter 52; the only avenue remaining open is informal home or private production unless, of course, substantial quantities of child pornography enter the country without detection.

In a single investigation (the All-American Studios case, see Chapter 50), the R.C.M.P. was provided with a list of 266 Canadian customers of a major child pornography producer in the United States. Considering this fact, in the Committee's judgment, it is totally improbable that the 330 seizures carried out by both the R.C.M.P. and Revenue Canada from 1979 to 1981 represents all, or even most, of the child pornography mailed or carried illegally into Canada over that span of time.

At present, there exists no satisfactory, lawful means by which to gauge the level of adequacy of the enforcement systems currently employed to detect and seize child pornography, and other material of an immoral or indecent character. Virtually the only trustworthy means of estimating the number of items successfully smuggled into Canada each year would be to resort to the methods of the consumer — that is, to mail and carry a certain volume of child pornography into the country using different border crossings and different International Mail Units in order to obtain a representative sampling of regional variations in the seizure success rates. The proportion of all items thus smuggled that were detected and seized would indicate that proportion of all smuggled pornography that Customs and the R.C.M.P. manage to seize. From this proportion, it would be then possible to extrapolate from the 330 seizures documented between 1979 and 1981, and to arrive at an estimate of the number of items of child pornography that eluded detection and seizure during that time period. Since a study of this kind would have involved systematic violations of Section 205(1) of the *Customs Act* and Section 164 of the *Criminal Code*, it was not undertaken by the Committee for both ethical and legal reasons.

On the basis of the evidence available, however, it is clear beyond reasonable doubt that a number of crippling problems beset the detection mechanisms currently in operation. These problems include: variable interagency co-operation and communication; vague Customs guidelines for seizure that lead to inconsistent enforcement; the inaccessibility to Customs line officers of the bi-weekly list of rulings by the Prohibited Importations Section; the incomplete collection of seizure-related information by Revenue Canada Customs and Excise headquarters in Ottawa; the routine non-inspection of first class mail and the assignment of too few inspectors to examine massive volumes of other types of mail; and restrictive provincial policies which hamstring local law enforcers, and which influence the enforcement practices of other

agencies. In addition, the consumers of child pornography have developed sophisticated importation techniques to guard against detection of the material, whether out of a dread of having their identities discovered, or as a means of protecting an expensive investment. Taken together, all of these factors indicate that the seizure success rate with respect to child pornography is very low.

## Types of Child Pornography Seized

When a comparison is made between the ratio of seizures of child pornography to all seizures of pornography and the ratio of the number of items per seizure of child pornography to all items of pornography, a consistent pattern emerges. Seizures of child pornography constituted 1.3 per cent of all seizures of pornography; the comparable proportion for items of child pornography to all items of pornography seized was 1.7 per cent. In the latter instance, on average, 15.9 items were included per seizure of child pornography in comparison to 12.1 items for all items of pornography.

**Table 51.3**  
**Contents of Seizures of Sexually Explicit Materials, 1979-81**

Type of Material Seized	Enforcement Service					
	R.C.M.P.		Customs		Total	
	No.	%	No.	%	No.	%
Magazines/comic books	47,776	27.7	65,865	45.3	113,641	35.8
Books	97,561	56.6	42,030	28.9	139,591	44.0
Photographs	5,786	3.4	4,187	2.9	9,973	3.1
Films	12,660	7.3	13,860	9.5	26,520	8.4
Videotapes	3,754	2.2	5,418	3.7	9,172	2.9
Catalogues	4,327	2.5	11,585	8.0	15,912	5.0
Adult newspapers	77	0.1	911	0.6	988	0.3
Playing cards/records	150	0.1	927	0.6	1,077	0.3
Audio tapes	215	0.1	552	0.4	767	0.2
TOTAL	172,306	100.0	145,335	99.9*	317,641	100.0

*National Survey of Seizures.* Sources — Revenue Canada Customs and Excise and R.C.M.P. Customs and Excise.

\*rounding error

While persons seeking to import child pornography illegally appear to have more items per seizure, child pornography *per se* represents only a tiny proportion of all detected illegally imported pornography. This contrast is even

more striking when it is recalled that some seizures of pornography may involve thousands of items, such as an issue of a widely circulated magazine.

**Table 51.4**  
**Contents of Seizures of Child Pornography, 1979-81**

Type of Material Seized	Enforcement Service					
	R.C.M.P.		Customs		Total	
	No.	%	No.	%	No.	%
Magazines	1,700	40.7	439	41.5	2,139	40.8
Photographs	1,681	40.2	428	40.5	2,109	40.3
Films	743	17.8	173	16.4	916	17.5
Videotapes	5	0.1	5	0.5	10	0.2
Catalogues	50	1.2	12	1.1	62	1.2
TOTAL	4,179	100.0	1,057	100.0	5,236	100.0

*National Survey of Seizures.* Sources — Revenue Canada Customs and Excise and R.C.M.P. Customs and Excise.

The findings in Table 51.4 indicate that the total number of items of child pornography seized by Revenue Canada and the R.C.M.P. between 1979 and 1981 was 5236. The fact that the R.C.M.P. was responsible for only 61 seizures is, by itself, deceptive since that agency was responsible for the confiscation of almost four times as many items as Revenue Canada. Given the type of investigations that the R.C.M.P. most frequently conducts and the fact that it took possession of an average of 69 pieces of child pornography in each seizure, it is apparent that in most of the R.C.M.P. seizures, substantial private collections were seized. An average of about four items were held in each Revenue Canada seizure. Thus, the figures for Revenue Canada seizures give a rough indication of the number of articles of child pornography in a single importation, as well as the proportion of all detected illegally imported child pornography accounted for by magazines, films, photographs, videotapes and catalogues. (The proportions of all seizures made up by each medium are almost identical for the Revenue Canada and the R.C.M.P. seizures. This is not the case for the seizures of all types of pornography. The correspondence between the relative composition of seizures made by each agency suggests that if the R.C.M.P. seizures primarily involved private collections, the correspondence may suggest that virtually all child pornography entering the country finds its way into collections of this kind.)

The Revenue Canada figures in Table 51.4 support the conclusion that child pornography generally is not imported for commercial distribution within Canada, since a professional distributor would have to bring the product into the country in quantities far more sizeable than four items per shipment in order to maintain an economically viable operation.



An important distinction between the seizure of all types of pornography and of child pornography lies in the relative numbers of photographs detected. Only 3.1 per cent of the number of all seized items of pornography were photographs, while 40.3 per cent of the number of items of child pornography confiscated were photographs. This finding confirms that individual photographs are a preferred medium in the child pornography market. Since photographs constitute perhaps the easiest medium for small-scale production, their popularity may be indicative of the conditions under which much child pornography is made (e.g., by individuals sexually abusing children or by the pimps or customers of child prostitutes).

Video tapes constitute a tiny proportion of all pornography, and of all child pornography, seized by the R.C.M.P. and Revenue Canada. This finding is deceptive. Video cassette duplicating equipment is not inordinately expensive or difficult to use, as is the equipment required for the reproduction of motion pictures. In order for a pornographic video cassette to become readily available on the domestic market, only one copy need be smuggled into the country. By contrast, mass reproduction of a film would require not only access to a professional laboratory requiring considerable funding, but also considerable expertise; alternately, would-be distributors of immoral or indecent films could produce them in Canada or attempt to smuggle in large numbers of copies. While many copies of a film would be large, bulky, and prone to be detected and seized, a single video cassette is compact, lightweight and can be hidden more readily. Also, a substantial amount of time is required to examine a video tape unlike a magazine, whose contents may be inspected in a few seconds. Thus, even if a pornographic video cassette is found on the person of an individual entering the country, the Customs inspector will seldom have the time to review its contents in detail (assuming that suitable physical playback apparatus is available; Beta and VHS and one-quarter inch formats would be required).

In spite of the low seizure figures for 1979 to 1981, the Committee considers that the videotape medium constitutes a potentially major problem with respect to enforcement of the laws designed to regulate pornography. It is evident from the proportion of advertisements featuring video tapes in the major pornographic magazines circulated across Canada (see Chapter 53) that this medium has grown rapidly since the introduction of video equipment and that it can be expected to expand further in the future. Likewise, it cannot be assumed on the basis of the R.C.M.P. seizures listed that the number of items in the collections of most Canadian child pornography customers is 69. The results of R.C.M.P. searches in the All-American investigation (see Chapter 50) suggest that the size of collection varies considerably from one collection to the next.

## Summary

The following are among the more salient findings emerging from the statistics on R.C.M.P. and Revenue Canada seizures:

1. There exists an east-to-west gradient in the rate of seizures of all types of pornography. This pattern may be attributable in part to variations in demand, but in the Committee's judgment a substantial proportion of this variation is also accounted for by regional differences in enforcement practice.
2. Compared to the total detected volume of pornography being imported illegally, there is little child pornography.
3. While it seems likely that the total amount of child pornography entering the country may be far greater than that seized, there is no massive importation of these materials.
4. The findings presented in this chapter do not negate the fact that child pornography is a serious problem. The informal, private production of sexually oriented materials involving children, as shown in Chapter 52, is a real phenomenon in Canada.

As a number of case studies in the Report indicate, there have been instances in which the use of child pornography was co-associated with sexual assaults on children. Thus, *any* child pornography entering the country is cause for concern, but it is misleading to suggest that child pornography is flooding into Canada, or has become a readily available retail commodity. The perception in some quarters that there has been a drastic influx of this kind of material may result from a tendency to confuse child pornography with other forms of pornography (which, as the figures obtained from the Audit Bureau of Circulation show, is widely marketed, and has increased in popularity at a startling rate in recent years).

**In light of its recommendations concerning amendments to the *Criminal Code* given in Chapter 3, and on the basis of its review of statutory provisions, enforcement practices and research findings given in Chapters 48, 49, 50 and 51, the Committee recommends that:**

1. The relevant definitional, seizure and forfeiture provisions in the *Customs Tariff*, *Customs Act*, and *Canada Post Corporation Act* be amended to conform with the *Criminal Code* prohibitions against visual representations of explicit sexual conduct involving persons under 18 years of age.
2. The *Broadcasting Act*, and regulations made thereunder, be amended to conform with the *Criminal Code* prohibitions against visual representations of explicit sexual conduct involving persons under 18 years of age.
3. In conjunction with the Office of the Commissioner, the federal Department of Justice in consultation with Revenue Canada and the Department of the Solicitor General review the operation of the central registry of Customs seizures with a view to assuring its efficient operation as a means of identifying the importers of child pornography.
4. The federal Department of Justice in conjunction with the Department of the Solicitor General, Revenue Canada, and the Office of the Commissioner:
  - (i) Announce publicly, including notices posted at entry points and a statement contained in Customs Declaration Forms, that the R.C.M.P. is actively seeking the co-operation of foreign enforcement agencies to

obtain information concerning the producers and distributors of child pornography, and that the R.C.M.P. intends to conduct a rigorous investigation of any suspected case of unlawful importation of child pornography;

(ii) Instruct the R.C.M.P. to seek out, where possible, the mailing lists of all major commercial producers and distributors of child pornography, and to undertake thorough investigations on the basis of the information so provided.



## References

### Chapter 51: Importation and Seizure

<sup>1</sup> Emphasis added.

<sup>2</sup> *Deputy Minister of National Revenue for Customs and Excise v. Tache* (1982), 65 C.C.C. (2d) 250 (Fed. C.A.). See also *Popert v. The Queen* (1981), 19 C.R. (3d) 393 (Ont. C.A.). But see *Re Priape Enrg. and The Deputy Minister of National Revenue* (1979), 52 C.C.C. (2d) 44 (Que. Sup. Ct.); and *Re North American News and Deputy Minister of National Revenue for Customs and Excise* (1974), 14 C.C.C. (2d) 63 (Ont. Co. Ct.).

<sup>3</sup> *Re Han and Deputy Minister of National Revenue for Customs and Excise* (1972), 8 C.C.C. (2d) 399 (B.C. Co. Ct.).

<sup>4</sup> *Re Priape Enrg. and The Deputy Minister of National Revenue*, *supra*, note 2.

<sup>5</sup> *Re North American News and Deputy Minister of National Revenue for Customs and Excise*, *supra*, note 2. See generally *Re Winkler and Deputy Minister of National Revenue* (1973), 15 C.C.C. (2d) 168 (Ont. Co. Ct.).

<sup>6</sup> *Re Priape Enrg. and The Deputy Minister of National Revenue*, *supra*, note 2.

<sup>7</sup> *Canada Post Corporation Act*, S.C. 1980-81, c. 54, ss. 40 (2)(a), 40 (2)(b).

<sup>8</sup> *Canada Post Corporation Act*, S.C. 1980-81, c. 54, s. 40 (2).

<sup>9</sup> *R. v. Shelley* (1981), 59 C.C.C. (2d) 292 (S.C.C.).

<sup>10</sup> *Customs Act*, R.S.C. 1970, . C-40, s. 145.

<sup>11</sup> *R. v. Havelock* (1974), 20 C.C.C. (2d) 186 (Man. C.A.).



## Chapter 52

# Production and Distribution of Child Pornography

In its Terms of Reference, the Committee was instructed to review the use of Canadian children in the making of pornographic materials. The Committee recognizes that this is an issue of deep public concern. As in the case of all types of pornography, there is virtually no documentation for Canada concerning the extent of child pornography, the types of materials involved and whether Canadian children are involved in the production of these materials.

The results of the investigations given in this chapter pertain to the sources of commercial production and distribution of child pornography; this is followed by a review of the importation practices used by persons purchasing this matter abroad. In relation to the non-commercial production of child pornography in Canada, the Committee drew upon the findings obtained in its several surveys and its meetings with enforcement authorities. The findings of the National Population Survey provide an estimate of the proportion of Canadians who have been subjects of sexually explicit pictures taken by persons who persuaded, bribed or forced them. The findings reveal the existence of an informal and fragmented system of private production of child pornography, one primarily undertaken to serve the sexual gratification of persons taking these pictures. Case studies are given which illustrate the different situations in which children have been involved in the making of sexually explicit depictions.

## Sources of Research Information

Throughout the Report, information has been provided about the design and findings of the several surveys conducted by the Committee. In relation to seeking documentation about the distribution and production of child pornography in Canada, the Committee drew upon the following sources of information.

1. National Accessibility Survey of Retail Outlets.
2. National Police Force Survey — 28 police forces in all provinces and the Yukon.



3. National Population Survey.
4. Periodical Distributors of Canada.
5. Provincial Attorneys General. Visits to senior officials of all provincial departments.
6. Revenue Canada Customs and Excise Division, Headquarters and Regional Branches.
7. Review of major court decisions concerning obscenity.
8. R.C.M.P. Customs and Excise Section.

In each of the Committee's contacts with senior officials of institutions or associations, information was sought concerning the production and distribution of child pornography in Canada. It is on the basis of these several sources that the Committee's findings are derived.

## Commercial Production

**On the basis of the sources of information reviewed, the Committee found that there was virtually no domestic commercial industry which used Canadian children for the commercial production of sexually explicit graphic, photographic or cinematographic depictions. By "commercial production" is meant the making of matter with open sale or rental as its primary purpose. None of the sources of information drawn upon by the Committee had positive and confirmed knowledge of any production of child pornography for commercial distribution in Canada.**

The Committee learned of three possible exceptions. The first involved a magazine entitled, "Let's Visit Canadian Moppets and Teens" which was being held on file at Project "P". The magazine is a glossy and professional production and features nude photographs of male and female children and adolescents, mostly in a wilderness setting (ostensibly in Canada, and evidently a nudist camp). Since the magazine was published in California, and since the surroundings in which the photographs were taken are not identifiable, it has neither been determined how many, if any, of the children depicted were Canadian nor whether the shots were actually taken in Canada. The nationality of the publisher does not decrease the likelihood that the children were Canadian, since the Committee has been advised that foreign companies distributing child pornography will often purchase photographs of children taken in other countries (including Canada) for inclusion in magazines.

While the Committee learned of instances from the National Population Survey in which persons had had sexually explicit pictures taken of themselves, in none of these incidents was it reported that these pictures had been taken for the purpose of commercial distribution. In the extensive review of court decisions and the review of the 6203 cases of sexual offences against children documented in the National Police Force Survey, the Committee identified only two

instances where it appeared that the production of child pornography may have been attempted for commercial purposes.

- *32 year-old male.*

In January, 1980, the Metropolitan Toronto Police Force filed an occurrence report, after receiving a complaint from a 17 year-old boy implicating a 32 year-old male in the making of pornographic films that featured female juveniles. According to the complainant, the suspect's practice was to recruit females at random from the street, and to offer them money to participate in his films. The complainant further stated that, while at the suspect's residence, he had seen the man engaged in various types of sexual activity with girls between the ages of 12 and 15 years. Allegedly, the suspect routinely paid \$100 each to the females used for his films. It was stated that, aside from receiving sexual gratification from the films, the suspect also sold and traded them with persons having similar sexual preferences.

The complainant alleged that the suspect was a slum landlord, and hence had a ready source of finances upon which to draw in funding his cinematographic projects. The police report states that the complainant's credibility is high, in spite of the fact that he was embroiled in a tenancy dispute with the suspect. A copy of the report was forwarded to the Metropolitan Toronto Police Force Youth Bureau, and to Project "P".

- *R. v. McCormick.*<sup>1</sup>

The accused, a 29 year-old male, first came to the attention of the police in July, 1978, when he became involved in a dispute with his landlord and threatened the latter with a firearm. As a result of this altercation, police executed a search warrant against the accused's apartment, and there discovered 21 boxes containing over 10,000 photographs (black and white), negatives and slides, as well as numerous films and books, all depicting male juveniles in sexually suggestive poses or engaged in sex acts. The acts portrayed include fellatio, buggery and bondage. Later investigation revealed that most of the photographs had been produced in the accused's apartment.

Project "P" was notified, and assumed responsibility for the police investigation. The material found in the accused's apartment was seized and the following criminal charges were laid: two weapons charges and one charge of possession of obscene photographs for the purpose of distribution under section 159(1)(a) of the *Criminal Code*.

Two subsequent searches were conducted by Project "P". In the first, photographic equipment and other material were seized at the accused's apartment. The second search took place at the North York Public Library branch where the accused was employed as an audio-visual technician. In addition to personal papers belonging to the accused, a 30 minute video-cassette was seized, on which were recorded scenes of whipping and bondage involving two male youths. The youths who participated in these scenes, as well as in a number of the still photographs, were identified as employees of the public library at which the accused worked. The library's theatre had served as the shooting location of the photographs and scenes in question.

Other material seized included: (i) large numbers of instruments of bondage and torture (such as leg irons, thumb cuffs, handcuffs, chains, ropes, straps, wrist-restraining straps, spurs and whips); (ii) a number of short stories written by the accused with sado-masochistic and homosexual-pedophilic themes; (iii) customer lists drafted by the accused, with detailed indexes and codes; (iv) advertising copy written by the accused in reference to pedophilic materials (on some of these pages were written block advertising rates); (v)



draft scripts for pornographic films; (vi) release stamps and forms of the kind employed in obtaining authorization from photographic models to use pictures taken of them; (vii) copies of the sections of the *Criminal Code* that relate to obscenity, and letters written to Members of Parliament by the accused concerning the obscenity laws; and (viii) correspondence conducted by the accused under an alias, concerning pornographic books and magazines.

In all, at least 10 juveniles were used by the accused in the making of pornographic photographs. The standard ploy used by the accused to secure the co-operation of his subjects was to claim that the photographs would be published in magazines in the United States where none of the youths' acquaintances would see them, and that such publications would earn them large sums of money. Apparently, however, none of the models ever received payment from the accused.

To the initial charges against the accused were added two counts of counselling to commit an act of gross indecency, and one count of making obscene pictures contrary to section 159(1)(a) of the *Criminal Code*. At trial, the accused pleaded guilty to the two counselling charges, and not guilty to the two separate obscenity charges, namely, making obscene photographs and possessing obscene photographs for the purpose of distribution.

With respect to the charge of making obscene photographs, the trial Judge held that the definition of obscenity in section 159(8) should be applied notwithstanding that the photographs in question were arguably not "publications". On this point, he followed Chief Justice Laskin's minority opinion in the Supreme Court of Canada case of *Dechow v. The Queen*.<sup>2</sup> The trial Judge further held that, on a charge of making obscene photographs under section 159(1)(a), it is sufficient for the Crown to prove that the accused made the photographs and that the photographs were obscene; it was not necessary for the Crown to prove that the photographs so made were intended to be published, distributed or circulated.<sup>3</sup> That the photographs were made by the accused, and that they were obscene within the legal test of obscenity outlined in section 159(8) of the *Criminal Code*, there was absolutely no doubt.<sup>4</sup>

"In my view, what is contained in these pictures goes beyond what the Canadian community is prepared to tolerate even in the relatively liberal atmosphere of contemporary times. One need only refer, as a particular example, to the pictures depicting teenage boys engaged in fellatio and in sado-masochistic roles replete with the hardware of sexual deviance such as handcuffs, whips, chains, etc. It is obvious from even a cursory viewing that the pictures and slides seized by the police and entered as exhibits to this trial have, as their dominant characteristic, either sex or a combination of sex and cruelty or sex and violence, and that a dominant characteristic of the nearly six thousand such pictures of this nature is the undue exploitation of these factors."

Accordingly, the accused was convicted of the offence of making obscene photographs contrary to section 159(1)(a) of the *Criminal Code*.

With respect to the charge of possessing obscene photographs for the purpose of distribution, the trial Judge noted that this offence does not oblige the Crown to prove actual distribution of the photographs, but only possession of the photographs coupled with a "perfected intention" to distribute them. That the photographs were obscene in the legal sense was beyond question;



the key issue on this aspect of the case was: Had the Crown proven beyond a reasonable doubt that the accused intended to distribute them?

The trial Judge concluded, after a thorough examination of the evidence, that the Crown had proven the accused's intention to distribute the impugned photographs. Several factors compelled this conclusion, notwithstanding the accused's strenuous protestations to the contrary: (i) the accused's exhortations to his photographic subjects to assume progressively more explicit poses, in order to make the photographs more "marketable"; (ii) the detailed customer lists in the accused's possession; (iii) the block letter advertisements and tentative commercial names ("Can-Pix" and "Foto-Fax") developed by the accused; (iv) the stamped model release forms which the accused employed; and (v) the enormous quantity of photographs taken, many of which were duplicated several times and in various sizes of enlargement. Accordingly, the accused was found guilty of the offence of possessing obscene photographs for the purpose of distribution, contrary to section 159(1)(a) of the *Criminal Code*.

The accused received a suspended sentence with respect to two obscenity offences. With respect to the two counselling offences, he was sentenced to two terms of six months' imprisonment, to be served concurrently, and was placed on probation for three years. His conditions of probation were as follows:

- The accused was not to associate with children younger than age 16, except in the context of a social gathering.
- The accused was prohibited from owning or using any form of camera, photographic, film or video-recording equipment, except for purposes of work related activity.
- The accused was prohibited from owning or having in his possession any obscene photographs or written matter with themes of homosexual pedophilia.
- The accused was required to seek steady employment upon being released.
- The accused was required to report to his probation officer every two weeks following his release.
- The accused was required to continue receiving intensive psychiatric treatment for as long as was necessary.

The accused's term was to be served in a detention centre where it would be possible for him to receive further psychiatric treatment. The trial Judge ordered that a copy of the accused's probation report be sent to him every three months.

Reasons for sentence included the fact that no violence had been used against the youths in obtaining their co-operation, that no physical injuries had been suffered by the participants, and that the accused had responded well to psychiatric treatment received since his arrest.

The accused successfully appealed against this sentence to the Ontario Court of Appeal.<sup>5</sup> The Court allowed the appeal, and reduced the sentence of incarceration to time served (approximately nine weeks). In addition to the terms of probation imposed by the trial Judge, the Court added the condition that the accused continue psychiatric treatment with the psychiatrists who had been attending him under arrangements approved by his probation officer. The Court's principal reasons for varying the accused's sentence were:<sup>6</sup>

“The main evidence against the appellant on all counts consisted of a large number of photographs of young boys taken by him and found in his apartment. The psychiatric reports disclosed pedophilic tendencies which had been treated by psychiatrists including one who specializes in the treatment of persons suffering from sexual problems. Treatment between arrest and trial had resulted in a marked improvement in the appellant. The psychiatrists testified that his sexual problems were treatable; that he would continue to benefit from treatment; and that he would probably regress if incarcerated. The psychiatrists were confident that, given continued treatment, he was not likely to present a danger to society.

Taking all these considerations into account, I am of the opinion that the sentence imposed on him was fit for his offence at the time it was imposed, but we cannot ignore the further information which has been placed before us. He was incarcerated at the Ontario Correctional Institute where facilities for psychiatric treatment are available, although not of the specialized kind required to treat his sexual disorders. He was not released on bail pending his appeal but has continued to serve the sentence imposed. After incarceration he suffered a severe physical upset which appears to have been prompted by emotional disturbance necessitating emergency treatment in a Toronto hospital. This episode must be considered in the review of his sentence and appears to bear out the prediction made by the psychiatrists that incarceration was likely to cause a break in his progress which had been so positive under his previous psychiatric treatment.”

**On the basis of the evidence available, the Committee concludes that there is virtually no commercial production of child pornography in Canada, and that the detected ventures attempted in this regard have been small, without exception, unsuccessful, and relatively promptly identified by enforcement services. The findings indicate that with respect to the control of the commercial production of child pornography in Canada, the various enforcement agencies are effectively and efficiently controlling this problem at the present time. These services, however, will likely face a situation of different proportions in the future as audio-visual reproduction equipment becomes more readily available and its use facilitates the easy and cheap reproduction of child pornography.**

There is no evidence that audio-visual reproduction of child pornography tapes is as yet a major enforcement problem in Canada. Its control, however, will entail the development of new and more sophisticated enforcement practices than those used to identify and control the commercial production of individual photographs or magazines.

## Commercial Distribution

“Commercial distribution” signifies the dissemination of a product to the retail marketplace through recognized, legitimate professional channels, such as wholesaling companies. As with commercial production, **the Committee**

learned that the commercial distribution of child pornography within Canada is virtually non-existent. None of the wholesalers belonging to the Periodical Distributors of Canada has ever been detected smuggling, importing, distributing or selling child pornography anywhere in Canada by any enforcement agency. On the basis of information provided by enforcement agencies and voluntary associations, its review of court cases and the findings of the national surveys conducted, the Committee learned of only two confirmed instances involving the commercial distribution of child pornography (see Case Study 5, Chapter 48; and *R. v. Ariadne Developments et al.*, cited below). In a third case, (*R. v. The MacMillan Company of Canada*), the accused corporation was acquitted of the charge of possessing obscene books for the purpose of distribution.

- *R. v. Ariadne Developments et al.*<sup>7</sup>

As a result of searches conducted by the Halifax City Police in late 1972 and early 1973, 21,509 books were seized from the corporate accused's principal place of business and from an express truck which had been seen being loaded at such premises. A police officer had purchased two of these books (which later became exhibit F-16 at trial) from the manager of a retail outlet for books, candy and tobacco in Bedford, Nova Scotia. The store manager had obtained these books from A.B.C. News, a subsidiary of the corporate accused. She typically received three to four hundred books each month from A.B.C. news and from the co-accused, Creelman, who was an agent of the corporate accused and apparently general manager of A.B.C. News.

Creelman and the corporate accused, Ariadne Developments Ltd., were charged under section 159(1)(a) with possession of obscene matter for the purpose of distribution. At trial, both accused were convicted, and were sentenced to fines of \$500 (Creelman) and \$12,500 (Ariadne Developments Ltd.).

The accused appealed to the Nova Scotia Court of Appeal. In delivering its judgment, the Court outlined the nature of the publications alleged to be obscene:<sup>8</sup>

"The two books which form ex. F-16 are entitled "Down On The Farm" and "Daddy's Playmates". The latter is, simply put, primarily a running account of an incestuous relationship between a father and daughter, mother and son and sister and brother, including descriptions not only of sexual intercourse between father and daughter, mother and son and sister and brother, but also of sodomy, cunnilingus and fellatio between the various members of the family. In addition, there are descriptions of acts of intercourse and other sexual acts between the members of the family and other persons. The book concludes with a description of the seduction of his granddaughter by the father. There is absolutely no story or plot unless it can be said that the descriptions of the sexual activities of the members of the family constitute a story.

The second book in ex. F-16, "Down On The Farm", is an account of the sexual activities of two male teenagers, including the description of an act of bestiality between one of them and a chicken.



A random sampling of the seized books includes "The Animalizers", which on its cover is described as being "an analysis and case histories of man's most infamous taboo human, animal sex content". This description aptly fits the contents which are but a series of accounts of sexual relations between humans and various animals.

"Apple For The Teacher" is a description of sexual activity of a female school teacher, primarily with her male students, including descriptions of acts of intercourse, sodomy, fellatio and cunnilingus performed singly and sometimes jointly with a number of her male students.

"Blow By Blow" is a description of a series of sexual activities between males."

After noting the relevant principles concerning the definition of obscenity in section 159(8) of the *Criminal Code*, and taking into account the testimony of defence witnesses, the Court concluded unequivocally that the impugned publications were obscene:<sup>9</sup>

"The main defence witness was Doctor Charles E. Tailer, a psychiatrist, who stated that in the past 10 years there has been a change toward liberalization of people's attitudes towards sexuality. On cross-examination, however, he was referred to a passage in the book "Daddy's Playmates" (part of ex. F-16) which describes an act of sodomy between a father and daughter and said:

Q. That's plainly a dissertation of incest, isn't it?

A. Yes.

Q. And you just admitted it is a type of activity which should be stopped.

A. I think it should, yes.

Q. You really think it is helpful to have a publication which shows this sort of thing?

A. I think it should be stopped, same as I think the drug experiment shouldn't go any further because we don't know the long term effects.

Q. Are you saying if one wants to experiment it is alright, but not . . .

A. No. I am saying it shouldn't go to any stage.

It is my opinion, applying the principles set forth in the authorities I have referred to, that the learned Magistrate was not in error in finding that the books in issue were obscene and in consequence the appeal from conviction by both appellants should be dismissed. I would but add that the books in the present case, based on the opinions set forth in the various authorities, conform to the standard formula of hard-core pornography and no matter what standards within Canada are employed they go beyond the Canadian community tolerance level and are obscene under our law."

On the issue of sentence, the Court stated:<sup>10</sup>

"The evidence of Sergeant Wyatt, as mentioned earlier, was that the books that bore prices had a total retail value of \$64,883.94. Counsel with the

appellant advised this court that \$12,500 represented two years' net profits of the company. The overriding principle of sentence in a case such as this is the protection of the public which can be achieved by deterrence. I feel, however, that a penalty of \$7,500 representing as it does more than one year's net profits of the company, would be adequate and I would reduce the fine accordingly."

• *R. v. The MacMillan Company of Canada Ltd.*<sup>11</sup>

The accused corporation was charged with possession of obscene books for the purpose of distribution, contrary to section 159(1)(a) of the *Criminal Code*. The book was entitled "Show Me", and was purportedly designed for use by parents in explaining sex to their children. The book's text was written by a doctor practising in Switzerland; its photography, captions and design were done by an American photographer. The photographs were taken in Munich, and the book was originally published in Germany in 1974. The English language edition was published in New York in 1975. The accused corporation was the Canadian distributor of the book. "Show Me" retailed in Toronto for \$14.95 and was packaged in cellophane.

The police seized a number of copies of the book in Toronto, and ascertained that 4,000 copies of the book had been distributed within Ontario, Quebec, Manitoba, Alberta and British Columbia. The Crown Attorney for Toronto threatened the MacMillan Company of Canada with prosecution in the event the book was not withdrawn. The corporation decided nevertheless to continue distributing the book, with consequent complaints from members of the public. It was these complaints which prompted the authorities to prosecute.

That the accused corporation possessed the book for the purposes of distribution was conceded. The sole issues at the trial were whether the book was obscene and, if so, whether the company's possession of the book for the purpose of distribution served the public good within the meaning of section 159(3) of the *Criminal Code*. An appreciation of the book's contents is necessary to an understanding of the legal conclusion reached in the case. Accordingly, the trial Judge's thorough description of the book in his written judgment is extracted below:<sup>12</sup>

"I turn now to a description of the book itself. It is a large 'coffee table' type format, measuring some 9 1/2 x 13 1/2 in. The front dust jacket reveals a photograph of two nude children, boy and girl, ages (I would gather) between six and nine. The inside of the front jacket gives information as to the contents of the book. To set out certain passages:

[It] . . . is an explicit, thoughtful and affectionate picture book designed to satisfy children's curiosity about sex and sexuality — their own as well as that of their elders. In a series of sixty-nine beautiful double-page photographs, accompanied by a running commentary assembled from actual reactions of children to the photographs, it explains and illustrates sexual development from infancy through adulthood. An illustrated text at the back of the book spells out the educational, ethical and psychological significance of the pictures, and supplies complete information on human reproduction, love, sexuality, sexual experimentation and marriage. This explanatory section, by a noted child psychologist, will help parents discuss with their children the pictures in the earlier part of the book.

The back of the dust jacket contains a brief biography of the authors as well as endorsements of the book by medical and religious notables.

The foreword at pp. 3-4 deserves full quotation:

We have made this book for children and parents. In their hands it can be an aid to sexual enlightenment. But above all we hope it will show parents that natural sexuality develops only when children are surrounded from birth onwards by a loving family and environment which does not repress sexuality. We don't believe a child will have 'found the answer' to sex simply by looking at the pictures in this book. A good understanding requires rather a continuing exchange between parent and child, a dialogue which helps the child express his questions and problems concerning sex and resolve them. The photographic part of this book is meant as a taking-off point for parents. Internal bodily processes such as conception and pregnancy as well as anatomical facts should be presented to the child in simple words by the parents themselves. The text at the end of the book makes suggestions for this purpose. It gives parents basic information on the development of sexuality and sex education. We are of the opinion that only an explicit and realistic presentation of sex can spare children fear and guilt feelings related to sexuality. For this reason we chose photography as a medium. With much care and under great difficulty we succeeded in photographing the children in such a way that their natural behaviour came through. We thank the children and their parents for their help in putting together the photographs. The captions to the pictures are gathered from their spontaneous comments. We hope this book will serve parents and children as a source of information and guide them toward a happy sexuality marked by love, tenderness and responsibility.

There follows 69 double-page photographs, each of which save one depicts human beings wholly naked or their genitalia. The first seven photographs show a boy and a girl, aged (I would gather) between six and nine, discussing their anatomical differences. The next three photographs concern a mother showing tenderness to and breast-feeding her baby, as seen through the eyes of, and discussed by, the aforementioned children. In the next photograph the mother comforts the boy whose world has been invaded by a new baby brother. The next photographs involve another child, aged (I would estimate) between one and two, exploring her mother's breasts, and being held lovingly in the latter's arms. In the ensuing two photographs, the boy who feels resentment to the new intruder holds the baby and contemplates how he was in his own infancy. This is followed by a child wrestling with his father.

On p. 36 there is shown the external female genitalia, and it contains a pejorative caption with an older male and female person apparently expressing disapproval. In the three photographs subsequent, the vulva, penis and external excretal parts of the body appear, with comments respecting their essential differences, although the common feature of the latter as to boys and girls is stated. As to the latter, the above-mentioned elderly people gaze disapprovingly from the caption.

The picture at p. 44 is merely a full face view of a young girl, aged (I would estimate) between five and six, captioned: "Look what I can see. But I don't want to see it any more."

An erect penis is shown, with a piece of cloth draped over it. And whatever else may be said about the book, I fail to comprehend how its internal necessities are served by this inclusion. There follows penises in the ordinary



state and photographs illustrating the difference between circumcision and the lack thereof, which take up the following double pages.

An inquiry from the boy who appeared at the beginning of the photographic section as to when he will acquire pubic hair and genitals like his father, with relevant pictures, will be found at pp. 52-5; and then a young girl who, I surmise, is the same girl shown full face at p. 44 is shown to be asking what two girls obviously past puberty are doing, as they are hugging one another. This leads into a query as to whether she will have large or small breasts and then culminates in a photograph of a boy, very much in adolescence, with an erection touching the breasts of an adolescent girl, and presumably the same girl holding the same boy's penis, all with appropriate captions.

The young girl whose questions and queries underlay the sequence of photographs that I have just described, then discloses (with accompanying photography) that she would like to have a baby but demurs at the idea of having the boy who appeared in the first seven photographs enter her vagina when they are grown up. Sequentially, she initially demurs at the sight of a couple, again probably aged between 14 and 16, preparing for sexual intercourse, although she finds goodness in the touching which is said to be part of the lovers' world. She then dwells on the topic of female masturbation as it involves her older sister and finds it to be beautiful. The boy then comments on male masturbation as related to him by his older brother, all of which is graphically shown in the photographs.

The penis shown in this section is, although not grossly so, considerably enlarged in size.

At p. 88 a close-up of the introitus and vagina appears, followed by five photographs of preliminary love play between a couple described as the boy's older brother and his girl friend. The photograph at p. 96 in which the girl friend holds the brother's penis is grossly enlarged.

The preliminary love-making series of photographs is accompanied by captions where the elderly man expresses shock and dismay at the activities portrayed, which include an act of fellatio. The elderly man is referred to by the children as "an old crab! And just cause those two are in love and are making out with each other". The children express complete approval not only of the preliminary love-making, but also of the sexual intercourse which follows.

The young girl who expressed a wish to have a baby is reassured by her mother that the couple's sexual intercourse stems from the fact that they are in love, but the girl expresses fear of a penis in her vagina as she earlier had done. Two photographs, one of which would be hopelessly incomprehensible if taken out of context, illustrating a close-up of sexual intercourse then follow, with the mother assuring the girl that sexual intercourse only occurs when people are older. The girl appears content and happy with her mother's explanation.

At p. 118 the elderly man states: "Dreadful, the things they tell children these days".

Nine photographs follow dealing with childbirth, two of which most effectively catch the accompanying pain and four of which equally catch the ensuing happiness of childbirth.

The photographic part of the book ends with the children who appeared at the commencement of the photographic odyssey expressing their wishes to be like their parents — the boy like his father; the girl, her mother.

The textual section of the book by Dr. Fleischhauer-Hardt consists of 28 pages, commencing with how to look at "Show Me" with parents and children. An excerpt from the first page of the explanatory text is indicative of the author's approach. (I am reading from p. 143 of the book.)

To avoid introducing repressions and new inhibitions regarding sexual matters, the adult should explain the photographs and encourage the child to talk about the feelings they bring about in him.

Parents who feel that the book is good, but hesitate to show it to their seven — or eight-year old, do so almost certainly because they fear they might impart to their children anxieties about their own sexual feelings or behavior patterns. Parents can easily overcome their fear if they go through the book section by section, looking at the photographs slowly and carefully and not showing them all at once to the children. In this way parents will give themselves and their children the opportunity to gain confidence in the material, little by little. The most important parts of this process remain conversation, explanation, openness on the part of adults, and their readiness to answer all of the children's questions.

Sex education and development is then discussed, not in depth but in a manner adequate to alert the parent to the necessity of and to the pitfalls in developing a capacity for love in terms of what the authors call "basic social trust". The text deals with this concept in the spectrum from infancy to late adolescence. The text encourages the exploration by the child of his or her body.

The explanatory text is accompanied by photographic captions. A substantial number of the photographs are reproduced from the pictorial section of the book. However, there are significant additions: a boy with his finger in his anus; an act of cunnilingus; a young child under the legs of two young people. As was the case in the pictorial section, the people shown in this section are all naked. Abundant photographs of male and female genitalia and sexual intercourse are included, as well as photographs conveying a message of family warmth and unity. Masturbatory action, both male and female, is reproduced.

The book contains an appendix, dealing in detail with contraception and to a lesser extent venereal disease. Shorter sections concern homosexuality and sexual behaviour disturbances.

On the last page of the book Will McBride describes the mechanics of the photography, and he writes:

The models were all friends. Except for the coitus scenes, mothers and fathers of the children were present and helpful during the photographic sessions.

It must be emphasized that in the photographic division of the book, the captions indicate that in many instances the younger children are watching or have had related to them the sex play

of the older boys and girls and young adults; also, in the photographic caption in the text illustrating anal exploration, there may be another person present.'

Expert evidence concerning the book was led by both the Crown and the defence. Experts called by the Crown testified to the effect that the book encouraged voyeurism and incest, and that it made no mention of the postponement of sexual gratification. The book's attitude towards older persons was thought pejorative. The pictures were said to be pornographic and the book was considered to have little educational merit. In one psychiatrist's view, the book's captions were stupid and its text confusing, with little relationship between the text and the photographs. Further, the human models used were thought to have been exploited.

Defence experts testified that the object of the book was sincere, and that the book treated sex directly, honestly and not immorally. The photographs were not erotic, but rather assisted in eliciting legitimate questions about sex. These experts would recommend the book for use by average Canadian parents. They testified that it did not promote promiscuity or permissiveness, and that it assisted children in receiving truthful information about sex. Several experts testified that in their view the book served the public good, by engendering a more enlightened view of sex among adults and by liberating persons from their own guilt sensations and repressed needs. It was contended that the book helped persons sort out their feelings and attitudes, and provided an opportunity for parents to discuss the range of sexual conduct with their children.

The trial Judge held, after an extensive canvass of the evidence and the applicable principles of law, that the book was not obscene, and therefore that it was unnecessary to consider whether the distribution of the book served the public good. In the Court's opinion, the author's purpose was not merely base exploitation, but was a serious attempt to educate and assist children and their parents in the realities of human sexuality. Although the book undoubtedly exploited sex, such exploitation, in light of the author's evident purpose, the internal necessities of the book itself, and the contemporary Canadian standard of tolerance, was not undue. Although the privacy of the models was invaded in the preparation of the book, this was done with their consent and, in the case of the child models, with the consent of their parents. Several of the photographs, if taken in isolation, would constitute obscene productions, but in light of the internal necessities of the book it could not be said that their inclusion was unwarranted.

Other features of the book which the Crown relied on as proof of obscenity, such as the testimony that some of the pictures, if not properly explained, might frighten children, and the disparaging treatment of older persons, were not relevant to the issue of obscenity. Moreover, the evidence did not support the proposition that the book encouraged incest, masturbation, voyeurism or instant sexual gratification. Finally, the book did not exceed contemporary community standards of tolerance. The evidence supported the view that the Canadian community would tolerate the use of the book by parents wishing to develop their children's sexuality with its assistance, and within the context of family responsibility and morality advocated by the book. The trial Judge stated:<sup>13</sup>

'If the book were intended to be and was viewed by children without guidance and explanation from their parents, the book would, in my judgment, seriously offend contemporary community standards in this country. That is not the intention of the authors, and I doubt very much that the packaging and pricing



of the book would permit it to fall into the hands of children, save through the agency of their parents.'

Accordingly, the accused corporation was acquitted of the charge of possessing obscene books for the purpose of distribution.

**The Committee's conclusions concerning the commercial distribution of child pornography in Canada parallel those reached in relation to the commercial production of child pornography. On the basis of the evidence available, the Committee concludes that there is virtually no commercial distribution of these materials and that enforcement services are now effectively and efficiently controlling this problem.**

In reaching this conclusion, the Committee recognizes that in some quarters there is the belief that child pornography is widely available across Canada. This perception appears to be fostered by two types of matter which are on occasion exhibited at public meetings and by the titles of some magazines which can be considered to be "pseudo child pornography" which are available in some retail outlets across the country.

At meetings convened to consider these issues, two types of matter are typically exhibited. First, certain sexually explicit depictions of children seized from individuals by the police may be exhibited. Without exception, to the Committee's knowledge, these exhibited commercially produced items have come from abroad and have been seized, when imported, or they have been obtained as a result of subsequent police investigation. Other exhibited materials, those not commercially produced, have come from the seized private collections of pornographers.

The second type of pornographic material which may be exhibited can be classified as "pseudo child pornography". In material of this kind, adult models are presented in such a way as to make them appear to be children or youths. Models used in such publications are chosen for their youthful appearance (e.g., in females, slim build and small breasts); they are presented with various accoutrements designed to enhance the illusion of immaturity (e.g., hair in ponytails or ringlets, toys, teddy bears, etc.). One magazine examined by the Committee referred to one of its models as "the Shirley Temple of smut". The National Accessibility Survey uncovered 15 magazines being sold in various parts of Canada, classifiable as "pseudo child pornography"; their titles were: Babe; Baby Face; Bad Girl; Baby Dolls; Creamy Virgins; Dominated and Diapered; Dollhouse; Nymphet; Over Daddy's Knee; Teens, Tits and Twats; Tiny Cunts; Young Wet Pussies; Young Stuff; Young and Lonely; and Young and Silky.

"Pseudo child pornography" is of concern since it may appeal to the same tastes and may evoke responses similar or identical to those elicited by true child pornography. However, it is distinct from, and is not 'geniune' child pornography in the sense that it is older adolescents or adults who are displayed in sexually explicit depictions, namely, it is not individual children who have been directly exploited in the making of such materials.

In searching for instances involving the production and circulation of child pornography in Canada, the Committee learned that the two main sources of these materials came from:

1. The importation of child pornography from other countries, largely by means of matter carried or smuggled across the border by means of the postal system.
2. Individual production or small group exchanges of child pornography.

These two sources of child pornography are documented in the next two parts of this chapter.

## Importation

**The best information available to the Committee indicates that any commercially produced pornography found in Canada is of foreign origin and has been imported illegally.** (This, of course, excludes non-pornographic youth-oriented publications; it was learned, for instance, that one bookshop catering primarily to Toronto's homosexual community routinely stocks a Boy Scout magazine produced in Quebec.) According to local police departments, the R.C.M.P., Revenue Canada Customs and Excise, various American enforcement authorities and some persons purchasing child pornography who were consulted, the primary importation techniques employed are mailing and personal smuggling (i.e., carrying the material across the border in luggage or on the person). Information based on seizures made by R.C.M.P. Customs and Excise and Revenue Canada Customs and Excise suggest that foreign large-scale commercial production and distribution of child pornography seems to be more or less restricted to three media: magazines, films and individual photographs; the seizure of these materials (see Chapter 51) further confirms that these three media are the ones most often chosen by consumers of child pornography for purposes of importation.

The following case studies illustrate the range of smuggling techniques used by persons illegally seeking to bring child pornography into Canada.

- *37 year-old male.*

In November, 1979, U.S. Customs informed Project "P" that German customs had broken up a pornography distribution ring and had identified a Canadian as a major purchaser of child pornography. The accused, a 37 year-old male residing in a small Ontario town, received the material at a post office box in Buffalo, New York.

A search of the accused's residence uncovered large quantities of child pornography, including books, magazines and 8-millimetre film; this material was seized, as well as a diary belonging to the accused.

The accused had been a public school teacher (and at times, a school principal) for over 15 years. Police also learned that the accused obtained child pornography from three European suppliers and that he received the material under an assumed name. The accused made several trips to Europe when United States authorities began actively prosecuting child pornography

distributors; in Europe, the accused mailed the material back to his Buffalo post office box. The accused visited the box from time to time, emptied it of its contents and then smuggled the pornography into Canada in the trunk of his car.

The diary revealed that the accused had taken valium while at school, that he often watched his pupils to catch a glimpse of their buttocks and genitals, that he tried to provoke sexual conversations in class, that he derived pleasure from any chance touching of his students and that he sometimes masturbated in his classroom while watching his students at recess.

Since there was no evidence of distribution, R.C.M.P. Customs and Excise charged the accused with possession of illegally imported goods with a value greater than \$200 (section 205(3) of the *Customs Act*). The estimated value of the seized material was over \$4000. The accused was also charged under the *Narcotics Control Act*. The police were unable to uncover evidence that the man had indecently assaulted his students or any other person.

The accused was temporarily reassigned to an administrative post in another city.

The accused pleaded guilty to both charges and was fined \$800 on the *Customs Act* charge and \$40 on the *Narcotics Control Act* charge. The seized items of child pornography entered as exhibits at trial were forfeited to the Crown, while the items not so entered were returned to the accused upon expiration of the appeal period.

- *Male about 50 years-old.*

In 1977, Project "P" received notification that Revenue Canada Customs and Excise had seized a large quantity of child pornography, including the addresses and nude photographs of about 2500 children. The material was seized from a male in his mid-twenties who stated that he was returning to Canada from Florida, and that his father (the suspect) had requested him to deliver the items to a Toronto address. The suspect was about 50 years of age, married and also had a daughter. Police learned that the suspect had an extensive criminal record in four countries, stretching over a 20 year period and consisting in large part of sexual offences against children.

The address to which the suspect's son was to have delivered the pornography was discovered to be that of a mailing service retained by a company owned by the suspect. In the judgment of Project "P" officers, the suspect was a major distributor of child pornographic films and slides, and was attempting to transfer his business operations to Canada, when the load of material carried by his son was discovered at the border. Revenue Canada retained the material, but no further action was taken against the suspect at that time. The woman who operated the mailing service was not regarded by police as being culpable since she refused to have anything to do with the suspect once she discovered the nature of his business; accordingly, no charges were laid against the woman or her business.

Later that year (1977), the suspect again came to the attention of law enforcers, when an American citizen complained to the United States Postal Service that he had not received colour slides of young girls that he had ordered from several addresses. One of these addresses was that of the mailing company already mentioned. The aggrieved customer had seen an advertisement placed by the suspect in a photographic journal; the advertisement showed a young nude girl wearing her hair in a pony tail, sitting on her buttocks, and curled into a foetal position, with her knees touching her forehead



(so that neither genitals nor breasts were visible). The United States Postal Service notified Canada Post concerning the matter.

The material handled by the accused consisted of thousands of slides of young, nude girls and boys, either posing alone or with other children, pamphlets and newsletters, including a "child's bill of rights" propounding that every child has the right to engage in sexual activity and that those who oppose pedophilia have deprived children of this right.

Project "P" was informed by the Los Angeles Police Department that the suspect had absconded from a Florida mental institution in 1976. In 1978, the Los Angeles Police Department notified Project "P" that the suspect was awaiting a bail hearing in California and requested information concerning his previous criminal activities inside Canada. The Los Angeles police were seeking to have the accused committed as an habitual sex offender. The suspect is now serving a 25 year prison term in Florida.

- *Male in mid-thirties.*

In 1982, R.C.M.P. Customs and Excise seized mail addressed to the suspect, a male in his mid-thirties. The R.C.M.P. informed Project "P" that the suspect might be a postal recipient of "hardcore" homosexual child pornography. Project "P"'s investigations revealed that the accused had a criminal record from the 1970s for offences including contributing to juvenile delinquency (by taking nude photographs of two, nine year-old boys) and two charges of indecently assaulting a male.

When they searched the accused's residence, Project "P" and R.C.M.P. officers discovered and seized large numbers of homosexual, child pornography magazines and photographs of nine male youths (who, subsequently, were identified). In addition, the investigating officers discovered several application forms for employment as a youth counsellor; the suspect had not actually applied for the posts, but evidently had some interest in them. At the time of the search, the suspect also admitted that he subscribed to two child pornography-oriented publications.

The investigating officers advised the suspect to seek psychiatric assistance. The individual stated that he would comply with this advice, and subsequently notified the R.C.M.P. that he was receiving treatment twice weekly from a medical doctor.

The Police Youth Bureau was assigned the task of determining whether the nine boys appearing in the suspect's photographs had been indecently assaulted. No charges were laid.

The mails are an attractive avenue of importation for the would-be consumer of child pornography. First, the case studies presented in this section of the Report indicate that persons who purchase material of this kind are anxious to avoid detection. The consumer of child pornography's apprehensiveness of being discovered is essentially the fear of facing humiliation, social ostracism, and possibly, criminal charges for any sexual acts that he may have committed with children. A taste for child pornography is one satisfied only at considerable expense. A review of child pornography seizures held at the offices of Project "P" revealed that individual black and white photographs sold for at least \$1.00, while small (5" x 7", 20-40 page) magazines varied in price from \$10 to \$50 apiece. Films and videocassettes sold for considerably higher prices.<sup>14</sup> Thus, the consumer of child pornography must also possess a powerful

economic motivation to take whatever steps are necessary to prevent the detection and seizure of any such material that he has ordered.

The postal system is, by its very nature, so constituted as to afford importers the opportunity to obtain child pornography while shielding their identities; it is this fact that likely accounts for the popularity of the mails as a conduit for the importation of sexually explicit depictions of children. The Committee learned of the following methods used either by subscribers or foreign distributors to avoid detection:

1. The use of pseudonyms by subscribers when placing orders.
2. The use of post office boxes by subscribers for the receipt of material ordered.
3. The concealment of child pornography in various packages, as well as in rolled-up newspapers and larger publications. The Committee learned of one incident in which Customs inspectors discovered a reel of film hidden in a cake mix box.
4. The re-routing of child pornography through other countries. Since Customs inspectors are most likely to be suspicious of packages sent from certain countries, distributors in these nations often re-route their products through seemingly more innocuous countries before final shipment to the customers.

One device used by the large-scale producers of child pornography is the subscriber mailing list. Lists of this kind are compiled by professional brokers. The lists are sold to companies catering to specialized classes of persons such as stamp collectors, scout masters, doctors and purchasers of various products. Some brokers specialize in providing lists of consumers who have purchased sexually oriented material. Depending on their size and quality, the lists may sell for thousands of dollars. After one company is through using a list, having developed a shorter but more comprehensive list of good customers, it may sell the original list to another company. Thus, any number of companies may have the same mailing lists. The utilization of mass-marketing devices such as professionally prepared customer lists indicates that American and European child pornography operations are sophisticated and lucrative concerns.

Another tactic used by mail order companies is to advertise the sale of relatively "soft core" material in newspapers, magazines and books. The names of purchasers of this material are then incorporated in mailing lists, and such persons are likely to become primary targets for advertisements for the sale of "hard core" and child pornography. In Chapter 53, the *Contents of Pornography*, a description is given of some of the advertisements placed in adult sex magazines having the widest circulation in Canada. The addresses from which these materials may be obtained are almost invariably located in other countries and indicate that the materials ordered will be sent to the purchaser in 'plain wrapping', 'a plain sealed envelope', or 'sent with discretion'.

Travel affords individuals the opportunity to purchase child pornography in parts of the world where such material is readily available and to smuggle



this type of merchandise into the country. Foreign visits not only facilitate personal smuggling, but can also be used to develop new channels of postal importation. Personal visits may facilitate the making of new contacts in other countries with persons willing to exchange photographs through the mail. In some instances, child pornography users have obtained post office boxes in United States border cities. These purchasers have had child pornography sent to their post office boxes; periodically, they have visited the given border city, emptied the boxes and carried the child pornography back with them into Canada. In other instances, the authorities have intercepted mail indicating that packages containing child pornography have been sent from abroad to be received by the sender.<sup>15</sup> The perceived advantage of the latter technique (from the customer's standpoint) may be that mailing pornography to his home address while travelling, creates less risk of detection and embarrassment than does actually carrying the material over the border.

As noted in Chapter 51, *Importation and Seizure*, the Committee recognizes that there is no fool-proof system of preventing the importation of child pornography either by means of personal or postal smuggling. The Committee believes, however, that considerably stronger effort is warranted than occurs at present by Canadian services to work in co-operation with the enforcement services in other nations which may have knowledge of child pornography distribution rings, that more effective identification procedures are required relative to the identification of matter coming through the postal system, and that information from both of these sources should be efficiently maintained on a central computerized basis for purposes of identification and follow-up of known buyers of child pornography.

The precedent already exists for each of these enforcement practices, but in each instance, their application needs to be sharply extended and placed on a more uniform and comprehensive basis. In this respect, there is no doubt that Canadians wish to have child pornography totally prohibited from coming into or being distributed in Canada on any basis — commercially or by means of informal exchanges. The strengthening of the existing enforcement practices recommended by the Committee, while not ensuring the absolute elimination of child pornography in Canada, would make its importation and distribution more difficult and would facilitate the identification and follow-up of known instances involving persons possessing child pornography.

## Non-commercial Production

In addition to importation, the Committee identified that the second and likely less extensive source of child pornography in Canada was the production for private use of these materials. On the basis of the findings of several of the national surveys and case studies assembled from police records and sentencing decisions, it appears that many of these reported instances involved the taking of individual photographs, apparently for personal use rather than commercial



purposes. The numbers of photographs seized in cases known to the police ranged from a few to almost 12,000.

## National Population Survey

A total of 10 persons in this nationally representative sample of Canadians reported that they had been subjects of sexually explicit depictions. Situations of this kind had occurred equally to both males (5) and females (5) and half of the respondents stated that they were children when they had been the subjects of these depictions. The ages reported when the incidents had occurred were: 9 year-old female; 11 year-old male and 11 year-old female; 14 year-old male; and a 15 year-old female. There were also four instances in which persons reported that members of their families or close friends had been subjects of such depictions when they were children. In two cases, the pictures taken had been used as a means of blackmailing the person involved.

At face value, the number of persons involved in these incidents is small. However, it is recalled that the findings were derived from a representative sample of the population, and to the extent that they are reliable, if the proportion found in the sample is prorated to the population, then it may be the case that over 60,000 Canadians, when they were children, may have been the subjects of sexually explicit depictions.

On the basis of the findings of this and other national surveys and the review of reported case law, there can be no doubt that incidents of this kind occur in Canada, in some instances, involving very young children. Taken together, the findings from the several research sources suggest that the reported prevalence of about one in 400 persons (1:401.6) having been the subject of a sexually explicit depiction as a child is likely an under-estimate of the actual occurrence of acts of this kind committed against children.

## National Corrections Survey

Information in the correctional records of 695 convicted male child sexual offenders indicated that one in 29 (3.4 per cent) was reported to have taken sexually explicit pictures of victims. These incidents varied in relation to the types of sexual offences committed, respectively involving 9.5 per cent of the victims of offenders having multiple victims, 7.0 per cent of the victims of homosexual offenders and 2.4 per cent of the victims of heterosexual offenders.

## National Juvenile Prostitution Survey

The survey's findings indicate that juvenile prostitutes are a high risk group in regard to being exploited by pornographers. Of the 229 youths who gave personal accounts to the Committee, about three in five (57.6 per cent)

said that they had been asked at least once by clients to be the subjects of sexually explicit depictions. These requests had been made about equally to both young male (58.3 per cent) and female (57.2 per cent) prostitutes. However, proportionately more males (20.2 per cent) than females (12.4 per cent) said that they had actually been involved in the making of these depictions.

The types of sexually explicit depictions taken of juvenile prostitutes included: posing nude with only the client present (19); performing homosexual or lesbian acts (4); being filmed while engaged in sexual intercourse (3), having intercourse with a dog (2) and performing sado-masochistic acts (2); pictures taken at male stag parties (3); and other (2), including a mould of a penis made by a "sculptor" and participating in the making of a pornographic film.

From the findings of the three national surveys and the case studies given below, the picture of the Canadian child pornography producer emerges as that of a male who photographs or films children as a means of obtaining sexual gratification. Persons who make child pornography often amass substantial private collections of the material. Often, though not always, the children depicted are those with whom the pornographer has had (or is having) sexual encounters. The following case studies illustrate the types of situations in which child pornography is typically produced in Canada.

## Case Studies

- *50 year-old male.*

Police began an investigation of the accused upon receiving a complaint from a mother who had found three nude photographs of her 14 year-old daughter in her home. The accused, a 50 year-old male, first met the mother and daughter when the child was 12 years of age. At that time, the accused obtained the mother's permission to photograph the girl. During the initial sessions, the child was fully clothed, but at subsequent sessions semi-nude photographs were taken, and by the time the daughter had reached her thirteenth birthday, she had been persuaded to pose fully nude. During some of the later sessions, the accused fondled the girl's breasts and crotch. Occasionally, the accused had the child photograph herself in the nude with the aid of a timed shutter release.

Once the mother's complaint had been received, the police conducted a search of the accused's residence and found thousands of photographs. A 16 year-old girl was also found in the house. This girl was depicted performing various sexual acts with the accused in many of the photographs seized.

The police learned that the accused was involved in boxing programs sponsored by a local Boys' and Girls' Club. Through these volunteer activities, the accused had cultivated the friendship of a number of young females, between the ages of 12 and 17, whom he gradually persuaded to pose nude, semi-nude and in sexually suggestive poses. The accused had had consensual sex with several of the girls who were between the ages of 14 and 16; he also had sexually assaulted two 14 year-old girls and had performed cunnilingus on one of them.

The police charged the accused with two counts of indecently assaulting a female, one count of making obscene pictures, and two counts of contributing to juvenile delinquency (section 33 of the *Juvenile Delinquents Act*). After pleading guilty to the charge of making obscene pictures and to one count of indecently assaulting a female, the accused was placed on two years' probation.

- *53 year-old male.*

The accused, a 53 year-old male, was the town photographer in a small community, and as such, photographed all local functions, sporting events and took the school pictures and individual portraits, but also photographs of young girls in gym and cheerleader outfits.

On occasion, the accused would invite young girls to come to his home (with parental permission) to have their photographs taken. The children always remained clothed during these sessions, and many of the photographs taken were of an innocent nature; for other shots, however, the accused would instruct the children to bend over, lie down, raise one leg or place themselves in other positions that would expose their panties or bottoms. (The genital area was the centre of attention in many of these photographs. The subjects of these photographs were between seven and 12 years of age). The accused gave the ordinary portraits to the parents and retained the "special" shots for his own use. He enlarged some of the photographs to 11" x 17". If the girl portrayed was older than 12, the accused would cut out a picture of a younger face and paste it over the older one. The accused also pasted pictures of children's faces onto pictures of adult nude women.

The accused came to the attention of the police when he sent an exposed roll of film by mail to a photographic laboratory for processing. The laboratory, in turn, contacted the police. Upon searching the accused's premises, police officers found hundreds of photographs of young girls with their panties exposed. In addition, there were thousands of photographs taken at school gymnasias, in which were pictured girls bent over, or in other revealing poses. The groin area was the constant centre of attention in these shots.

The accused was charged with one count of mailing obscene matter (section 164 of the *Code*) in connection with the roll of film that he sent to the laboratory. A charge of indecent assault on a female was eventually withdrawn. After a 30 day psychiatric assessment, the accused pleaded guilty and was placed on probation for one year, subject to the proviso that he did not photograph children unless they were under the supervision of a person at least 21 years of age.

- *Husband and Wife.*

The accused, a 35 year-old freelance photographer who worked at night as a janitor, gained access to children by serving as a volunteer in the Big Brothers Organization. The accused lived with his 29 year-old wife (the co-accused) and his three children, ranging from three to nine years of age. The complainant, a 14 year-old "little brother" of the accused, stayed at the accused's home on weekends. The youth was first persuaded to shower with the accused; eventually the relationship progressed to the point where the two would engage in acts of mutual fellatio. The wife encouraged this relationship, was always present when her husband and the boy had sex and, on occasion, would engage in sexual intercourse with the youth while her husband buggered him. The boy was then used to recruit other young boys for the couple. The couple performed various sex acts with the other boys, whose ages ranged from 10 to 16.



On many occasions, the accused and co-accused photographed their sexual activities with young boys.

A small proportion of the photographs was discovered by police when they searched the couple's home. Police investigations also revealed that the accused had invited Boy Scouts to his home, whereupon he showed them pornographic material and made sexual advances to them.

Police speculate that the couple may have received some form of advance warning of the impending search and that this would explain the absence of most of the photographs from their home. The charges laid against the two accused were as follows:

Charge	Husband	Wife
Buggery	two counts	one count
Indecent assault on a male	one count	
Gross Indecency	six counts	three counts
Contributing to Juvenile Delinquency	one count	

The male accused received concurrent sentences of four years for each buggery count and one year for one count of gross indecency. The female accused was given a two year suspended sentence which, on appeal by the Crown, was increased to 18 months' imprisonment.

- *21 year-old male.*

The accused, a 21 year-old probation officer working with a youth group, became involved sexually with an 11 year-old boy under his supervision. The accused took nude photographs of the boy and submitted the film to a commercial laboratory for processing, whereupon the laboratory contacted the police. A search revealed more photographs indicating that the accused had been involved sexually with other male youths. The accused admitted to having felled the 11 year-old male at a summer camp. The accused also admitted to police that he was a homosexual and stated that he had been receiving psychiatric assessment and treatment for years. After his arrest, the accused was released in the custody of his father, under strict conditions, including the stipulation that he not associate with persons under 16 except in their parents' presence. He was charged with indecently assaulting a male.

- *30 year-old male.*

The accused, a 30 year-old ship's cook, travelled regularly between Halifax and St. John's over the two year period of his employment. In June, 1978, on the St. John's stopover of one such trip, the accused invited nine youths (sexes not specified) to his hotel room. Here, the youths participated in a photographic session in exchange of between \$10 and \$15 each. The photographs taken showed the youths in nude and semi-nude poses, and included shots depicting acts of fellatio and buggery. The number of youths appearing in each photograph ranged from one to four.

The police began their investigation of this case when the mother of a 12 year-old boy reported her suspicion that her son had been photographed in the nude by the accused. Statements obtained from the nine juveniles revealed that the accused had carried on his photographic activities over a

two year period, and that some of the youths had been used as models repeatedly during that span of time. One of the youths had been photographed on between 10 and 15 occasions, and had received as much as \$500 over the two year period. Some of the juveniles had also been used to recruit others to participate in the accused's photo sessions.

The accused was charged with one count of "counselling an act of gross indecency" and three counts of contributing to the delinquency of juveniles under *Newfoundland's Welfare of Children Act*. The accused pleaded guilty to the "counselling" charge, upon which the three less serious, charges were withdrawn; he was sentenced to four years' imprisonment.

- *53 year-old male.*

The accused, a 53 year-old male, came to be known locally as "The Candy Man" because of his practice of asking young girls to visit him at his home in exchange for candy and money. The girls lured into the accused's home were shown pornographic magazines, in order to lower their inhibitions. The girls were then induced to engage in sex acts with each other and with the accused. The accused took nude and semi-nude photographs of the victims while they were performing these acts. In some instances, the girls felated the "Candy Man". None of the victims was older than 15, and most were between the ages of 10 and 12. In investigating the case, the police executed a search warrant on the accused's home, and seized drugs, some of the photographs of the girls and pornographic magazines.

"The Candy Man" was charged with four counts of indecent assault on a female and five counts of gross indecency. No charges were laid in connection with the accused's photographic activities.

- *Two Males.*

In 1981, the police were notified by a photographic laboratory that an individual had submitted a roll of colour film for processing which, when developed, had yielded photographs depicting sex acts between a child and an adult. From 13 impugned photographs, the following depictions were noted: the erect penis of a reclining adult male; an adult male with genitals exposed and pants pulled down to his knees; a naked 11 year-old boy sitting with the penis of a naked, standing adult male resting on his head; acts of fellatio and buggery involving two adult males; an adult male holding his own penis and that of another adult male; and a naked boy holding the penis of an adult male.

A search was conducted at the residence of the person who picked up the photographs from the laboratory. This person, the first accused, was taken into custody; he identified the child as well as the second adult appearing in the photographs (the second accused).

The first accused stated that he had known the victim and his parents for some time. According to the first accused, he had taken some of the photographs himself and the child had taken others. He denied having engaged in sexual acts with the child at the time of the photographic sessions, but admitted that the boy had licked his penis on other occasions. The first accused further admitted having been questioned and released by police after several other children had complained of his having had sex with them.

The child's statement indicates that he took four of the photographs. While no violence was used against the boy to obtain his compliance, one police report notes that the child resisted participating in the photographic sessions.



Police files disclosed that a number of previous complaints had been lodged against the accused for alleged sexual involvement with children. The earliest of these complaints was made when the first accused was 16 years-old.

Both accused were charged with counts of gross indecency, buggery and indecent assault on a male, while the first accused was also charged with gross indecency with respect to his involvement with the child. In addition, charges of making obscene matter and contributing to juvenile delinquency were laid, but were later withdrawn. The first accused was released on his own recognizance subject to the condition that he not associate with juveniles.

At trial before a county court judge, both accused pleaded guilty to all charges. The second accused, who was found not to have instigated the commission of the offences, received a four month reformatory term. The first accused had yet to be sentenced when this information was collected, and was undergoing psychiatric treatment.

The victim apparently received counselling and psychological help following the incidents described above. The boy's father testified at trial that his son had become the subject of ridicule by his peers at school and by his sister, once the facts of this case became known locally.

- *19 year-old male.*

The accused, a 19 year-old male, submitted a roll of film to a commercial laboratory for processing. When developed, the film yielded photographs of two young girls, apparently 11 or 12 years of age. The girls were pictured in states of full and partial nudity, and in one shot, one of them appeared to be masturbating herself. The laboratory notified the police who, in turn, visited a number of local schools and succeeded in identifying one of the girls portrayed in the photographs. The girl was enrolled in a class for slow learners. This identification precipitated the search on the accused's residence.

The accused occupied the basement of a house in the upstairs portion of which resided a woman separated from her husband and her four children, two girls five and nine years-old, and two boys, eight and 10 years of age. The search uncovered nude and semi-nude photographs of these children. The accused admitted having sexually assaulted all four children, and was charged with two counts of indecently assaulting a female, two counts of indecently assaulting a male and one count of contributing to juvenile delinquency (section 33 of the *Juvenile Delinquents Act*).

- *62 year-old male.*

The accused, a 62-year old man with no previous criminal record, used glue and contact cement cleaner as an item of barter between himself and the numerous female children with whom he became sexually involved. The children befriended by the accused were between the ages of nine and 16; many were runaways and came from families with histories of alcoholism.

When the accused's residence was searched by the police, a 13 year-old runaway girl was discovered in the accused's bedroom. The girl stated that, since the age of 12, she had had sexual intercourse with the accused on four or five occasions, either in exchange for glue or for money (the amount paid by the accused was \$2.00 on these occasions). The police also found several full and empty cans of contact cement cleaner, vasoline, one rubber glove, rubber vibrators and 30 polaroid photographs of nude and semi-nude females, all of whom appeared to be under 16 years of age. In one of these photographs, an apparent act of cunnilingus was depicted.



Police investigators revealed that over a two year period, the accused had used as many as 16 female children for his sexual gratification. The accused was charged with six counts of having sexual intercourse with females under the age of 14, pleaded guilty to two of these counts and was sentenced to six months' imprisonment.

- *29 year-old male.*

The accused, a 29-year old university professor, gained access to children through his volunteer work as a group leader for a boy's club and as a supervisor at a school youth reading program. Seven victims of the accused were identified, all males between the ages of eight and 15. Most of the boys came from "broken homes" in which there were no male parental figures. Boys befriended by the accused were invited to his apartment where they were given food, candy and liquor as a means of gaining their trust and lowering their inhibitions. The accused then showed the boys pornographic films depicting acts of homosexuality, bestiality and sex between male children. The boys, often inebriated by this time, were asked to undress and to perform sex acts with the accused and with each other. These activities were photographed by the accused.

When the police searched the accused's apartment, they discovered about 50 reels of 8 millimetre film, books, magazines and 15 photo albums containing more than 400 photographs. All of this material featured depictions of children. The acts portrayed in the photographs included buggery, fellatio, masturbation and oral-anal sex.

The accused was charged with one count of indecent assault on a male and three counts of gross indecency. At trial, the accused was found guilty on all charges and was sentenced to two years less a day. He also received a concurrent sentence of 18 months to be served at a psychiatric facility.

- *Husband and Wife.*

The police occurrence form states that in 1977, the accused husband and wife invited a 13 year-old male into their apartment, and performed various sex acts in his presence. The boy was then undressed by the accused woman and induced to have sexual intercourse with her while her husband watched. A few days thereafter, the same boy returned to the accused's apartment accompanied by another 13 year-old male; on this occasion, the accused engaged in sex acts with both of these boys. The two juveniles were given alcohol and marijuana. The accused male offered the boys "a substantial sum of money" to pose (for photographs) while engaging in sex acts.

Police investigations of the case led to the seizure of a number of pornographic films of men and women, as well as photographs of males and females engaging in various sexual activities; several of the photographs depicted the female accused having sexual intercourse with a dog. When interviewed, the female accused admitted that she had posed for the latter group of photographs and that the male accused had taken the pictures.

- *Re Hawkshaw and The Queen.*<sup>16</sup>

In October, 1980, Project "P" was notified by a commercial film processing laboratory that it had received a roll of film which, when developed, contained obscene photographs. In one of the photographs, an adult male was shown fellating a 17 year-old male while another youth looked on. The accused, who had submitted the film, was identified from the envelope in which the film had been received. The accused was a male civil servant about

60 years of age. Project "P" executed a search warrant on the film laboratory's retail outlet and seized 25 photographs from the roll of film in question. Although the accused appeared in several of these photographs, he was not a subject in the "fellatio photograph."

Project "P" executed a search warrant against the accused's rural residence, which was identified as the location where the fellatio photograph had been shot. The following items were seized as a result of this search: 48 photo albums, loose photographs, fifty 8 millimetre films, a box of negatives, an address book, notebooks, correspondence and two cancelled cheques. The accused admitted that he owned the camera used to take the fellatio photograph, but denied having taken the picture or having been present when it was taken. He identified the participants in the photographs and stated that they had been weekend visitors at his home.

This information prompted a search by Project "P" of the residence of the co-accused, who was the adult male depicted fellating the male youth. The shirt worn by the co-accused in the photograph was seized. The co-accused admitted that he was one of the persons photographed, but denied that an act of fellatio had actually occurred. The impugned photograph, he protested, was taken from a bad angle and was misleading. He also identified the male youth alleged to have been fellated ("the victim").

According to a person interviewed by Project "P" (who was the brother of a person found in the accused's residence when it was searched), the victim had been drinking heavily on the occasion when the photograph was taken. This person stated that the accused had taken the fellatio photograph.

The victim, a 17 year-old male, admitted to having gone to the accused's residence for the weekend and confirmed (after initial denials) that an act of fellatio had taken place. He also admitted to having consumed a large quantity of alcohol — enough to make him vomit — and stated that the accused had taken the fellatio photograph.

The co-accused was charged with gross indecency under section 157 of the *Criminal Code*. He pleaded guilty at trial and was sentenced to a fine of \$1,000 or, in default of payment, to two months in jail.

The accused Hawkshaw was charged with making an obscene photograph under section 159(1)(a) of the *Criminal Code*. The preliminary inquiry was beset with irregularities. Two of the Crown witnesses, apparently including the victim, gave testimony which conflicted with their earlier written statements to the police. Both witnesses (who were friends of the accused and the co-accused) were later charged with perjury, but the charge against the victim was withdrawn. One of the persons present at the accused's residence when it was searched was charged with obstructing justice, apparently for exhorting the victim, in the form of a threat, not to give evidence against the co-accused.

The accused was committed for trial on the section 159(1)(a) charge, but his committal for trial was set aside in a higher court. Mr. Justice Osler, in quashing the accused's committal for trial, held that on a charge of "making" obscene photographs under section 159(1)(a), to publish or to intend to publish the photograph is an essential element of the offence.<sup>17</sup>

The Crown successfully appealed from this ruling. The Ontario Court of Appeal held that publication or intended publication is not an element of the offence in section 159(1)(a) of making an obscene photograph and that the accused should accordingly be committed for trial on that charge. The word

“makes” in section 159(1)(a) is very broad and may encompass a single act of creation, whether or not publication is contemplated.<sup>18</sup>

“[Section] 159(1)(a) is quite explicit, and Parliament intended it to be an offence to make or to print an obscene picture, even though it might not be made for the purpose of publication or was not made known to the public.

It seems reasonable to conclude that Parliament considered that the protection of the social interests threatened by the dissemination of obscene material could be most effectively accomplished by proscribing altogether the bringing of the offensive material into existence.”

The Court further held that there was no justification for applying a different test of obscenity for offences involving “publications” and matters which were not “publications”, and therefore, that the definition of obscenity in section 159(8) should apply to all obscenity-related prosecutions.

On the issue of whether the photograph should be considered obscene, the Court stated:<sup>19</sup>

“It will have to be decided at trial, on the basis of all the evidence, whether a dominant characteristic of the photograph is an undue exploitation of sex. In determining what is undue exploitation of sex within section 159(8), the test to be applied is whether the accepted standards of tolerance in the contemporary Canadian community have been exceeded. This is a matter to be determined by the trial Judge in an objective way after considering the relevant evidence . . . The fact that the picture was intended solely for private viewing and was not intended to, and did not come into anyone’s hands, other than those of the person who took the picture and the commercial establishment which developed it, may be very relevant in considering what the Canadian community would tolerate. A sketch or a model which is the product of the author’s imagination and is only intended to be viewed privately might not be found by the trial Judge to constitute an undue exploitation of sex. On the other hand, he might be driven to conclude that the community would not tolerate, even for private viewing, a photograph depicting the commission of an act of gross indecency where one of the participants is a minor. In short, publication is not a prerequisite to a determination that a picture is obscene, but it is a relevant circumstance to be weighed in making this determination.”

• *R. v. E. and F.*<sup>20</sup>

In 1979, a commercial film processing laboratory in Toronto notified Project “P” concerning a film submitted for processing at one of the firm’s retail outlets in a small Ontario city. The film had been submitted by the female who was later accused, Mrs. E. Photographs processed from the film depicted a man, a woman and a young girl about 10 years-old. All three persons had been photographed in the nude, and some of the pictures of the young girl were clearly sexually suggestive. For example, in one photograph, the young girl posed nude with her legs spread widely apart.

The police interviewed the female accused, who was a 35 year-old divorcee with no prior criminal record. She lived with her common law spouse, Mr. F., and with two children from her former marriage, a 15 year-old boy and an



11 year-old girl. The male accused, Mr. F., was about 30 years-old, and was also divorced. He had co-habited with Mrs. E. for about eight years.

When the police showed them the photographs, the two accused identified the persons portrayed therein as themselves and the 11 year-old girl. They stated that they did not consider the photographs to be objectionable, since they were nudists and intended to raise the girl in the nudist lifestyle. Further, they claimed that the pictures of the girl had been taken for posterity. The two accused also showed the police photographs from their family album. Several of these photographs depicted the male and female accused, and the girl, in the nude.

In this initial investigation, no charges were laid because the photographs had been made exclusively for family perusal rather than for distribution or sale. The photographs were returned to the accused with the stipulation that no further nude pictures of the young girl should be taken.

About two months later, Project "P" was informed by a local police force that a film processing laboratory had reported receiving film containing depictions of a young girl in sexually suggestive poses. The name on the envelope in which the film was submitted was that of one of the accused.

A warrant was obtained and a search conducted at the accused's residence. Approximately 400 photographs and negatives were seized. The accused were charged jointly with engaging in sexual immorality in the home of a child, and thereby endangering the morals of the child contrary to section 168 of the *Criminal Code*. As required by section 168, the Attorney General's consent to the prosecution was obtained. Charges for the making of obscene pictures under section 159(1)(a) of the *Code* were not laid because it was doubtful whether the photographs seized satisfied the legal test of obscenity.

Among the exhibits entered at trial were photographs of the girl in numerous poses, some totally nude, and others, semi-nude (e.g., in boots, "provocative" negligees, high heels or with an umbrella). In another photograph, the nude girl was seated between her mother's legs with her own legs spread widely apart. Some of the photographs focussed on the child's genitals.

Testimony at the trial revealed that the female accused had become involved with a commercial enterprise specializing in the sale of erotic lingerie through the homes of sales representatives. The female accused was one such sales representative, and would hold "parties" at which she would model the lingerie for an audience of invited guests. The erotic lingerie sold by the female accused had been used as a source of costumes for her daughter when the little girl had participated in the photographic sessions. Evidence was also adduced to the effect that the two accused had shown copies of "Playboy" to the girl, had asked her to emulate the poses of the adult models depicted therein, and had photographed her in these poses.

The trial Judge concluded, with the aid of expert testimony from a child psychiatrist, a child psychologist and a social worker, that the photographs were inappropriately sexually suggestive given the age of the girl concerned. A number of factors grounded his conclusion: (i) the prominent display and apparent emphasis on T.'s genitals; (ii) the number of such photographs; (iii) the fact that, where clothes were worn by T., they were in the nature of lingerie; and (iv) the inappropriateness of the poses and clothing, where worn, having regard to the age of the child. The trial Judge remarked that "the child T. is assuming provocative adult poses at a stage in her life when she does not even exhibit secondary sexual characteristics."

On the next issue before the Court, namely, whether the photographic depiction of the child in this manner constituted participation by Mrs. E. and Mr. F. in "sexual immorality", the trial Judge considered that the legal test was an objective one, and therefore, that it was immaterial whether the photographic sessions in which T. had participated were a manifestation of the family's nude lifestyle. On the basis of the content of the photographs, the age of the child participant, and the manifest failure of the accused to provide acceptable sexual guidance to their child having regard to her age, the trial Judge concluded that both accused had participated in "sexual immorality" within the home of the child T.

On the issue whether the child's morals were endangered by the accused's conduct, the trial Judge held that, although the Crown need not prove some present harm or injury to the child's morals, it must prove that there is genuine risk that the child's morals have been endangered. Extensive expert evidence was sought on this issue, and indicated that the child T. had been exploited sexually in a manner that could be considered child abuse. It was stated that the photographic depictions evidenced an undue emphasis on sex rather than on love, on outward appearance rather than on inner-self, and that the parents' conduct could be detrimental to the child's self-image and to her emotional and moral development. It was further testified that a child of T.'s age would probably not be able to interpret these acts and would see them as a way of gaining parental affection, and that this perception could be harmful in confusing the child about the nature of healthy expression of affection between her and her parents. A social worker specializing in child abuse testified that T. had been exposed to adult forms of behaviour with sexual overtones inappropriate to her development, and that this could lead to role confusion about how one appropriately expresses love and affection with a family. All the experts agreed that this type of photography, insofar as it involved the child T., should cease, and the trial Judge accordingly held that the Crown had met the onus of proving beyond a reasonable doubt that T.'s morals had been endangered. Further, it was held that the Crown need only prove that Mrs. E. and Mr. F. intended to engage in the acts found to endanger the child's morals; it was not necessary for the Crown to prove that the accused consciously intended to endanger the child's morals by so-acting, or even that the accused intended to participate in sexual immorality.

The accused were accordingly, convicted of participating in sexual immorality in the home of a child and thereby endangering her morals, contrary to section 168 of the *Criminal Code*.

At the sentencing stage, the trial Judge noted that neither of the accused was alleged to have been involved in any way in improper physical or sexual contact with the child T., nor was there any suggestion that the photos in which T. was featured were taken with a view to publishing or distributing them. He further stated his conviction that the investigation and trial process had made the accused realize that to continue this type of activity posed a real threat to the child's moral development, and therefore that the protection of the public, which is one of the principal considerations in the sentencing process, could best be achieved by promoting the accused's rehabilitation.

Accordingly, the sentence of both accused was suspended and a three year probationary period was imposed. The conditions of probation were that no photographs were to be taken by either accused or by anyone else at their direction or under their control, in which the child T. was nude or partially-nude or in which any other nude or partially-nude person was photographed in the presence of the child T. Both accused were required to submit to psychological and psychiatric assessment, counselling and treatment with the



child T., under the direction and on-going supervision of the local child protection services. Further, the accused were required to provide the representative of the local agency free access to their home, without notice and at all reasonable times, for the purpose of enabling the on-going supervision process to be carried out.

A review of these case studies and others assembled by the Committee indicates that child pornographers are usually detected in one of three ways. Their identities become known by: direct police investigation, often stemming from other types of complaints or suspected infractions; the police being notified by film processing laboratories; and direct complaints made by victims or their parents (the latter appears to be the least frequent means by which such cases come to light).

In most of these cases, prior to the incident having been investigated, the police had no previous knowledge of the child pornographers. The child pornographers usually operated on their own, and notably, males were involved in all of these instances. Where two or more persons were involved, most of the offenders were males. However, cases also occur in which a male and female show pornography to children, take sexually explicit pictures of them and commit other sexual offences. The situations described in the case studies clearly show that the pornographic pictures taken of children involved both boys and girls.

Most of the children photographed were also either sexually fondled or assaulted. This sequence of making child pornographic pictures and sexually assaulting children closely parallels the cases documented in Chapter 55, *Associated Harms*, in which children were shown pornography and then an attempt was made to assault them sexually, or actual sexual assaults occurred. In each situation — the making of pictures and the showing of pornography to children — the common element which is almost invariably present is the culmination of the encounter in an actual or an attempted sexual assault against the child.

In a majority of the incidents documented, the children already knew the child pornographers who frequently held positions of trust. Some individuals had deliberately become associated with various youth-related activities for the purpose of being in close contact with children whom they subsequently sought to entrap. The positions of trust involved, included: family friend, school photographer, father, probation officer, members of Big Brothers and Boy Scouts, school teacher, university professor, and landlord, among others. Pornographers typically bribed or lured children to their homes, and after seeking to lull their suspicions, gradually proceeded to a situation in which the children were enticed, or on occasion, forced to pose nude. This stage was often followed by an attempt to photograph the child performing some form of sexual act either with the pornographer, or less often, with other children. In relation to how cases involving the making of child pornography came to the attention of the police, it is evident that only a small proportion of the cases directly resulted from complaints made by victims or their parents.



## Summary

In the Committee's judgment, the findings indicate the need for a comprehensive educational program to be given on the media and in the schools to inform and alert children about situations of this kind. This approach may be criticized by some on the grounds that children may become unduly afraid of all contacts with adults or that it is not the business of the state to intrude in matters which are more properly the concern of parents. However, the available evidence suggests that these are situations that children find difficult to discuss openly with members of their families or friends.

The Committee believes that children who are educated about these risks will be better able to protect themselves, and also, will obtain the encouragement and reassurance necessary to help them overcome their reluctance to identify persons who have attempted to take or have taken pornographic pictures of them.

## References

### Chapter 52: Production and Distribution of Child Pornography

- <sup>1</sup> *R. v. McCormick*, unreported, January 10, 1980 (Ont. Co. Ct.).
- <sup>2</sup> *Ibid.*
- <sup>3</sup> *Ibid.*, See also on this point *Re Hawkshaw and The Queen* (1982), 69 C.C.C. (2d) 503 (Ont. C.A.), leave to appeal to Supreme Court of Canada granted (Laskin C.J.C., McIntyre and Wilson, J.J.) November 1, 1982.
- <sup>4</sup> *R. v. McCormick*, unreported, January 10, 1980 (Ont. Co. Ct.) at 23.
- <sup>5</sup> *R. v. McCormick*, unreported, March 14, 1980 (Ont. C.A.).
- <sup>6</sup> *Ibid.*, at 2-3.
- <sup>7</sup> *R. v. Ariadne Developments Ltd.* (1974), 19 C.C.C. (2d) 48 (N.S.C.A.).
- <sup>8</sup> *Ibid.*, at 51-2 *per* MacDonald J.A.
- <sup>9</sup> *Ibid.*, at 59-60 *per* MacDonald J.A.
- <sup>10</sup> *Ibid.*, at 60 *per* MacDonald J.A.
- <sup>11</sup> *R. v. The MacMillan Company of Canada* (1976), 31 C.C.C. (2d) 286 (Ont. Co. Ct.).
- <sup>12</sup> *Ibid.*, at 289-96.
- <sup>13</sup> *Ibid.*, at 321.
- <sup>14</sup> Gulo, M.V., A.W. Burgess and R. Kelly, Child Victimization: Pornography and Prostitution, *Journal of Crime and Justice* 65:69, 1980. This report notes that American bookstore prices range from \$5 to \$20 for magazines, and refers to a 50-foot reel of film depicting sex acts between two youths, that was scheduled to sell for \$50 (U.S.).
- <sup>15</sup> Review of child pornography seizures held on file at the Office of Chief Investigator, Canada Post, Ottawa.
- <sup>16</sup> *Re Hawkshaw and The Queen* (1982), 69 C.C.C. (2d) 503 (Ont. C.A.), leave to appeal to Supreme Court of Canada granted (Laskin C.J.C., McIntyre and Wilson, J.J.) November 1, 1982. According to the Registrar of the Supreme Court of Canada, this case will be argued during the 1983-84 judicial term.
- <sup>17</sup> *Re Hawkshaw and the Queen* (1981), 62 C.C.C. (2d) 289 (Ont. H.C.).
- <sup>18</sup> *Supra*, note 16, at 510 *per* Howland C.J.O.
- <sup>19</sup> *Ibid.*, at 515-516 *per* Howland C.J.O.
- <sup>20</sup> *R. v. E. and F.* (1981), 61 C.C.C. (2d) 287 (Ont. Co. Ct.).





## Chapter 53

# Contents of Pornography

In order to determine the types of sexually explicit depictions contained in pornographic magazines, a content analysis was undertaken of the issues for June, 1983 of 11 magazines which are widely distributed in retail outlets across Canada.<sup>1</sup> These magazines had an audited Canadian circulation of 13,539,900 copies in 1981.<sup>2</sup> The definition of pornography adopted in this content analysis derives from the listing of specific types of sexual acts used elsewhere in the Report. The Audit Bureau of Circulation statistics for 1981, those most recently available when the analysis was undertaken, were used as the basis for the selection of the 11 pornographic magazines.

For each magazine, each page was divided into 12 equal parts in order to determine how much space was devoted to photographs, text, cartoons and advertisements. The analysis of the contents of the photographs in these magazines was developed on the basis of the list of sexual acts used by the Committee in relation to the analysis of sexual offences. For each photograph, a number of different features might be identified with each being separately counted. For example, a photograph which depicted a nude man with his genitals shown being kissed by a fully clothed woman would be listed under the categories of: fully dressed woman; kissing; nude man; and genitals explicitly depicted.

A similar list of sexual acts was used in the textual analysis, with the addition of categories for children and handicapped persons. No distinctions were made between letters, editorials, articles and fiction: the emphasis was on the number and variety of sexual acts described in the complete text of each magazine. Instead of using "story" as a unit (as "photograph" can be used), "vignette" or "episode" were deemed to be more appropriate. Otherwise, a five page story in which a male commits 12 acts of sexual intercourse in 12 different situations, for example, would be given the same weight as a single paragraph in the letters column describing one act of intercourse. If an act occurred in a discrete piece more than once, it was only listed once, as an element of the piece. For example, in an anecdote about group sex in which three participants simultaneously committed acts of oral sex, oral sex is listed once as an element of that vignette.

As part of the textual analysis, the letters column of each magazine was examined in relation to the gender of the correspondents, as were the feature writers listed in the Tables of Contents, the publishers and the editors. Finally, a detailed examination was made of the advertising contained in each magazine. Lists were drawn up of the types of products advertised; these products were then categorized either as general consumer goods or as sexually oriented goods.

## The Magazines Reviewed

There was considerable diversity in the contents of the 11 magazines, with each catering to somewhat different tastes in relation to the types of sexual behaviour or acts portrayed and the degree of explicitness in sexual depictions. Before providing a content analysis of these magazines, a summary is given of the salient features of each publication.

**Penthouse** is the top-selling pornographic magazine; it sells five million copies every month worldwide,<sup>3</sup> almost a tenth of which are bought by Canadians.<sup>4</sup> It contains a slightly higher than average amount of photographs. These, however, account for a relatively low percentage of the entire contents. Although the number of advertisements in *Penthouse* is only half of that in *Playboy*, it is still about double the average found in most of the other magazines. About two-thirds of the products advertised are general and men's consumer goods and the rest are sexually oriented products, most of which are available by mail order. Many of the articles aim for the same tone of general interest as those appearing in *Playboy*, but in addition there is a comparatively high level and variety of sexual content, especially in the "Forum" (letters from the readers) section. The photographs explicitly depict the female body; there is some variety in the subjects and acts portrayed.

**Playboy**, founded almost 25 years ago, is the oldest magazine of its genre, and something of a prototype. At 274 pages, the June, 1983 issue is twice the length of the other magazines and while it has a slightly higher than average number of pages devoted to photographs of all kinds, these account for a very low proportion (17.3 per cent) of its overall content. The difference is advertising. *Playboy* has three and a half times the average amount of advertising, most of which displays expensive general and men's consumer goods. Not much of the text is devoted to exclusively sexual subjects. The sexual content of the photographs is typically restricted to depictions of nude and partially nude women, posed singly.

**Hustler** has the third highest sales among pornographic magazines in Canada. The June, 1983 issue contains a relatively high proportion of violent images in the text (photographs and illustrations). The photographs are explicit and cover a wide range of sexual activities, including a simulated lesbian bondage scenario.<sup>5</sup> Most of the text is sexually oriented and only a small proportion of material is of general interest — for example, an article on Unidentified Flying Objects (U.F.O.s). The advertisements are almost exclusively sexually oriented; the few which are not are small and advertise mail order products.

**Gallery**, at 114 pages, is one of the shorter magazines. It contains a fairly high percentage of general interest features, for example, articles and reviews of generally released films. The sexually oriented photographs depict women



singly, or in one case in a non-sexual duo. In contrast to *Playboy*, this magazine does not contain much advertising and only one third of the products are general consumer goods, most of which are available on a mail order basis. The sexually oriented advertisements are generally non-explicit. *Gallery's* "The Girl Next Door" feature is a phenomenon common to half of the magazines reviewed, in which photographs of non-professional female models are sent in by readers, most popularly in monthly contests: "Friends and Lovers" in *Genesis*; "The Girl Next Door" in *Gallery*; and "Beaver Hunt" in *Hustler*.

**Cheri** is billed as "The All-True Sex News" magazine. It has a somewhat different format than the others, for as well as the standard pictorials, it has a high proportion of photo-journalistic stories involving locations which the staff of the magazine has visited. In the June issue, for example, these stories describe a nudist camp, a lingerie and sexual aids' boutique, and a number of nightclubs. Everything in the magazine is sexually oriented, including all but a very small proportion of the advertising. *Cheri* has a higher proportion of its contents devoted to photographs than any other magazine, as well as having more actual pages of photographs. The contents of these photographs, specifically the ones accompanying the news stories, are explicit and professional.

**Playgirl**, a pioneer in its field, publishes photographs of nude men instead of women. It is the only magazine in which references in the text are made to contraception and pregnancy. The photographs are relatively uniform: nude or semi-nude, shots of single men and one pictorial of a heterosexual couple. It has the lowest number of photographic pages of any magazine other than *Forum*, and at 132 pages, it is slightly below the average length. The text emphasizes general issues, humour, what are perceived as women's issues, and an average amount of sexually oriented content. One-third of the advertising is devoted to general and women's products, while the other two-thirds concerns sexually oriented goods.

**Forum** is something of an anomaly in terms of its format. It originated in response to the positive reception by readers of the "Forum" section in *Penthouse*, and its contents are mostly text rather than photographs. Small, more like a journal or book than a magazine, it contains articles by sexual therapists and other experts, more anecdotal, titillating articles, as well as a large selection of letters, some of which seek advice and some of which relate sexual experiences. The advertisements are largely devoted to sexually oriented goods. The text — specifically the letters — contains most of the references to pedophilia and incest found in the review of the 11 magazines. Of nine photographs, only one is in full colour, and that is the cover. It is the only magazine to depict sexual scenes between two men.

**Oui's** format contains pictorials interspersed with general interest articles and a sizeable amount of sexually oriented material. There is some emphasis on violence in the text and photographs. It is the only magazine to have a full pictorial of a nude woman posed with an animal. It has the second highest number of pages of photographs. The proportion of advertising is low and the majority (84.5 per cent) of the products advertised are sexually oriented.

**Club** magazine claims a worldwide distribution of two million copies,<sup>6</sup> 2 per cent of which are sold to Canadians.<sup>7</sup> The magazine contains the widest range of depictions of sexual behaviour, both in its photographs, but especially in its text. There is an emphasis on bondage, sadism and masochism, as well as on scatological elements and other fetishes. In format it is slightly larger than the other magazines, which (except for *Forum*) are a uniform 8 x 10 3/4 inches: *Club* measures 8 3/4 x 11 7/8 inches. It has a high proportion of photographs and a low proportion of text and advertisements. The products displayed are almost uniformly (91.0 per cent) sexually oriented.



**Swank**, at 100 pages, shares with *Club* the distinction of having the least number of pages, though both their cover prices, along with *Hustler*, are at the top of the \$2.00 — \$3.95 scale. *Swank* contains reviews of X-rated films, interviews with pornographic movie actors and other related features. The textual content is completely sexual — the cover promises “Sex On Every Page!” — as are the advertisements (92.4 per cent of the products advertised). It has a fairly high proportion of photographs, many of which are explicit and depict a wide range of participant subjects.

**Genesis** (“Celebrating the Good Life”) follows the format of interspersing mainly sexual contents with articles of general interest. There is an average proportion of photographs, and the pictorials, almost without exception, are of individual females. The amount of advertising is slightly below average, and the majority of the products displayed (55.6 per cent) are general consumer goods, half of which are available on a mail order basis. There are a few articles relating to other pornographic media, as well as “how to” articles: “Winning with Women: Score with Personal Ads” and “How to Score with a Waitress”. There is one violent image, but otherwise not much violent content.

Six of the 11 magazines have proportionately more page space devoted to photographs than to any other feature. Generally, the magazines containing more explicitness and sexual variation are those having proportionately the most photographs, while the magazines which also include general interest articles and contain less variety in their sexual content have a higher proportion of text and/or advertisements.

## Magazine Covers

Apart from *Playgirl*, which displays a photograph of a fully dressed male celebrity, the covers of the magazines are fairly uniform: all have glossy colour photographs which display partially clad women with no sexual parts of the body showing. Some of the cover models are dressed in revealing clothes (*Gallery*, *Cheri*, *Forum* and *Oui*), some are wearing lingerie (*Playboy* and *Hustler*) and some are practically nude (*Penthouse*, *Club*, *Swank* and *Genesis*). The covers of the last four magazines display most of the models’ breasts, though their nipples are not shown. (The nipples of the model on the cover of *Club* are partially visible, but are covered by a sticker in the Canadian edition). In none of cover photographs is the model’s pubic area visible: it is either covered or off-camera. The cover of *Hustler*, which contains a rear photograph of a woman from the waist down, is the only cropped photograph.

## General Scenes

General scenes, for the purposes of this study, are defined as photographic representations of non-human subjects, or in some cases, shots depicting persons in an unambiguously non-sexual way: for example, a crowd scene or a news photograph. All the magazines, except for *Forum*, have general photographs ranging from less than 1 per cent to 8 per cent of the photographic

pages. In the majority of cases, the general photographs are smaller in size than those which are sexually oriented, though most of them are in colour.

## Individual Females

With the exception of *Playgirl* and *Forum*, most of the photographs in these magazines depict individual female models. The highest proportions are in *Genesis* and *Gallery*: 82.4 and 72.4 per cent of their photographs, respectively, are devoted to individual women. These magazines, along with *Playboy* (55.5 per cent), follow a fairly predictable formula with few variations. *Playboy* contains a large proportion (40.8 per cent) of photographs in which the subject is fully clothed and/or is only visible from the shoulders up. Some of these are in the nature of news or celebrity photographs; a smaller proportion depict the authors of articles in the magazine. The majority of these non-sexual photographs are of women depicted in sexual ways elsewhere in the same pictorial, or of women identified as "Playmates".

In depictions of individual females, the majority of the sexual content in these three magazines is in the form of glossy colour pictorials, usually several pages in length, featuring one model. The overall emphasis in these sexually oriented photographs is on partially dressed rather than fully nude models. Accessories are popular — lingerie, high heels and stockings. In *Playboy*, *Gallery* and *Genesis*, there is not much variety: breasts are exposed in half to three-quarters of the photographs, buttocks in 9.9 to 19.4 per cent, and the pubic area in 18.4 to 39.0 per cent. Genitals are displayed in one in six pictures in *Genesis*, only twice in *Gallery* and never in *Playboy*. The individual models are sometimes depicted either as touching themselves or as removing or loosening their clothing. Generally, the models are inactive and posed to be seen rather than to depict any type of particular activity.

*Cheri* magazine, though different in format, does not differ much in its depiction of individual female models: it follows the glossy pictorial format, and is comparable to *Gallery* and *Genesis* in terms of explicitness and the types of acts depicted. The photographs of women in *Penthouse* follow a similar format, except that they are more explicit than those in *Playboy* or *Gallery*. Half (50.4 per cent) of the photographs in *Penthouse* are devoted to individual females: different participant-subjects occur in a large proportion of the photographs. *Hustler*, *Swank* and *Oui* are correspondingly more explicit: the former two have a greater number of explicit photographs of genitals than non-explicit depictions. These magazines also have a number of scenes depicting masturbation, bondage, sadism and masochism.

*Club* magazine is in a category by itself, in terms of the variety of acts depicted. The issue contains only five photographs of clothed women; otherwise, the bodies of the models are displayed explicitly and a high proportion is engaged in masturbatory activity. There is some emphasis on apparent vaginal penetration by foreign objects — though not in the main pictorials — and a

heavy emphasis on bondage, sadism, masochism, leather clothes and fetish items and elements of violence. The latter are often obscured by the corresponding text. For example, there is an 11 x 7.5 cm. photograph of a women's feet, clad in high heeled sandals, protruding from the trunk of a car. The image could arguably be construed as a violent one, yet the accompanying text, although sexual, de-emphasizes any violent constructions:

"... Why hasn't some inventive entrepreneur cum[sic] up with the Pussy Pick-up? We can see it now. Drive-in, check out the merchandise muffs, make your selection, and drive away for a piece of ass or whatever else it is you desire. This klutz, though, could have at least put her in the front seat. How can she give a proper blow job from all the way back there?"<sup>8</sup>

Apart from its cover, *Forum* contains practically no photographs of individual females. *Playgirl* contains 21 photographs of women, none of which is sexually oriented. In these two magazines, about two in five photographs of individual women are in colour, in contrast with the 90-100 per cent range in the other magazines.

## Two or More Females

Couples who are supposedly lesbian are a popular subject for full-scale layouts. The pictorial in *Hustler*, "Love Slave", is noteworthy for its inclusion of a strong theme of sadism and masochism. The text reinforces this theme with the catchwords "slave" and "mistress". The photographs depict ritualized scenes of bondage, masturbation, simulated oral sex and simulated vaginal penetration by a riding crop. In one full page photograph, the "slave", described in the text as a "young girl", is depicted tied to the bedposts while her black-clad "mistress" kneels over her, the high heels of her boots suspended inches away from the other's exposed, practically hairless vulva.

"Rawhide", a pictorial in *Club*, while it lacks the sadistic overtones of "Love Slave", contains several comparable elements: it depicts simulated acts of oral sex and explicit close-ups of model's genital and anal areas. The setting and costuming are pseudo-western.

"Steam Heat" in *Swank* follows the same format, with simulated kissing, caressing, masturbation, three scenes of simulated oral sex and one scene in which one model holds a bath-brush against the other's buttocks. The setting is a shower. The models' bodies are depicted explicitly; as is the case with *Club*, most other shots of female models together are stills from films.

Although the emphasis is different, "Pillowfight" in *Oui* continues the lesbian theme. "Tina and Marci are room-mates at Yale", the caption reads. "Tina studies biology, Marci wants to be an actress. They've been friends all their lives." The same types of acts previously noted are depicted with a comparable degree of explicitness, though the setting is a large white bed covered with goose feathers and the models are young and playful.



*Gallery* has a pictorial of two women posing nude together with no sexual activity and devotes approximately six pages to this category. *Cheri* has approximately 13 pages of women posing nude and semi-nude together, with minimal sexual contact. *Playboy*, *Forum* and *Genesis* have no photographs in this category, and *Penthouse* and *Playgirl* have one and three, respectively.

## Heterosexual Couples

Several of the magazines have full-scale colour pictorials of heterosexual couples. In the pictorial in *Penthouse* which accounts for all but three of the photographs in this category, "Steve" and "Leanne" engage in caresses and simulated oral sex. The female model engages in masturbatory activity and her body is explicitly depicted.

*Swank* also contains a pictorial, "Lust Affair". The setting is affluent and exotic; the models are wearing lingerie. The caption is, "She only wants him for sex. That's fine with him". Though more explicit, the acts depicted are similar to those appearing in *Penthouse*, with the addition of one subdued fetishish image: in one photograph, a woman holds the high heel of her shoe against the man's penis. Three of the photographs are censored, two of which depict oral sex.

*Club* has 44 photographs of couples. The bulk of these are contained in one pictorial, "Joe and Sugar", which is cast in a setting evocative of the gangster films of the 1930s and includes depictions of: caresses, simulated oral sex, explicit views of female genitals and five photographs of actual or simulated intercourse. Elsewhere in the magazine, other depictions include one instance of oral/anal contact, six of actual or simulated intercourse, bondage and sado-masochistic paraphernalia, some violence, and fetish-related activities centring around lactation and high-heeled shoes.

*Playgirl* contains a short pictorial in which the models undress and caress each other. The emphasis is on the man's nudity; the woman is never fully shown. The other photographs in this category are mainly news photographs or stills from generally released films, none of which is explicitly sexual.

None of the other magazines places much of an emphasis on heterosexual couples, though all contain some photographs of this type. *Cheri* has 20, *Playboy* has 11, *Hustler* has six, *Gallery* has six, *Forum* has four, *Genesis* has four and *Oui* has three.

## Individual Males

*Swank* magazine has no photographs of individual men, and *Penthouse*, *Playboy*, *Gallery*, *Cheri*, *Forum*, *Oui* and *Genesis* have between less than a fifth of a page and about three pages, none of which contains sexual content involving individual males. *Hustler* has one photograph of a nude man in the

“Beaver Hunt” section and *Club* displays two partially dressed men and one in black leather with his genitals partially visible.

About three in five (61.3 per cent) of the photographs in *Playgirl* are devoted to individual male models. Half of them are totally nude with the models’ genitals being explicitly depicted. Five models appear to be undressing and one is touching himself. The shots are in colour; some in the pictorial format and some in a tenth anniversary section feature models from previous issues of the magazine.

## Two or More Males

*Playboy*, *Gallery* and *Playgirl* all have a few photographs in this category, none of which has sexual content. Of the other magazines, only *Forum* has pictures in this category. *Forum* has three photographs which accompany an interview with a gay man: monochromatic depictions of the torsos of two men who hug and caress each other.

## Mixed Gender Groups

*Oui* magazine has the most pages devoted to photographs of mixed gender groups engaging in sexual activities; it is the only magazine which has a full pictorial in this category, “The Revolt of the Slave Girls”. This pictorial involves three “slave girls” and their “master”. The acts depicted include: actual or simulated oral sex, vaginal sex and caresses and, once the slaves revolt, seven photographs of ritualized sado-masochism.

The photographs in this category in *Playgirl* and *Gallery* do not depict sexual acts. In *Club* and *Swank*, there are approximately two pages each of photographs of mixed gender groups, most of which are stills from pornographic films depicting explicit sexual acts. The other magazines also have relatively few photographs in this category.

## Other Groupings

In addition to the foregoing categories, there are two photographs of transvestites or transsexuals and two depicting women with animals. In the former category, there is a news-style photograph of an entertainer in *Playboy* and a photograph in *Club* of what appears to be a woman exposing her penis. In the latter category, *Hustler* contains a small colour photograph of a naked woman with a large boa constrictor and *Oui* contains a pictorial called “The Lady and Tiger”, which features a nude female model posed with a tiger. Although no sexual acts are depicted, the text states:

“Since I was a child, I have been attracted to wild animals . . . sometimes the feeling is sexual. Imagine the power of a tiger, the roughness of its

tongue. How could any date I might have compete with that? [ . . . ] My needs — *all* of them — are taken care of . . . ”.<sup>9</sup>

A number of advertisements of books and magazines with contents related to bestiality and transvestitism/transsexuality are listed in several of the magazines. Typically, however, editorial content does not refer to these subjects.

## Violence in Photographs and Illustrations

There are a number of violent images depicted in the magazines, some of which take the form of illustrations. *Hustler*, for example, has a two page illustration of a blood-splattered female torso. Her blouse is open, her nipples erect. Beside her on the floor is manuscript, “The Bloody Blade: Confessions of the Fisherman”. The accompanying text reads:

“When I smiled, my lips tasted of her strawberry lipstick. Her tits wobbled playfully as I slapped them again, hard. Then I pulled the bait knife from my back pocket, I nicked my finger and swore. This put the delicious terror back into the girl’s eyes. The rape had felt good, but the best was yet to come.”<sup>10</sup>

A long, narrow knife lies across these pages which is splattered with blood. The accompanying story details the capture of a man who rapes, kills and mutilates young women.

A story in *Oui* entitled “Nazis On the Loose!” is accompanied by two full-page illustrations, the first of which inaccurately depicts three men and one woman in Nazi uniforms sitting at a table, apparently torturing a baby. As a background portrait of Hitler looks on, there is blood dripping from the table, one man wields a knife and a large Alsatian dog slathers. Upon turning the page, the reader sees the same persons, apparently years later, sitting down and enjoying a peaceful meal. One of the men is carving a chicken.<sup>11</sup>

Accompanying “The Great Crime-Wave Myth”, an article which states that crime is on the decrease, *Genesis* magazine published a one and one-third page photograph of a female body under a blood-stained sheet, lying in what looks like an alley or street. No clothing is visible, though the woman’s bare legs and arm protrude from under the cloth.

*Swank* magazine has three photographs of women in boxing gloves and helmets engaged in “bare breasted boxing”: “The girls come out swinging! Dangerous Dotty lands a breathtaking blow to the boobs! And a crunching chop to the cleavage!!! The men at ringside are going wild!” In the same issue, accompanying a story entitled “Fuck or Die!”, there is a two page photograph of a woman and man partially undressed and engaged in what appears to be actual or simulated intercourse as an onlooker nudges the man’s buttocks with a gun and another man looks on.



*Club* has several depictions of persons who are bound or are threatened by whips. It also contains a short series of photographs from a film of two women engaged in a dispute in which one woman wields a whip and several times apparently bloodies her half-naked adversary.

## Types of Sexual Acts Depicted in Photographs

The salient features of the photographs contained in 11 pornographic magazines circulated across Canada during the middle of 1983 are summarized in Table 53.1. It is recalled that the number of features or elements listed exceeds the actual number of photographs contained in these magazines. Thus, if a photograph showed both a female's breasts and a male's penis, both depictions were counted.

The results of the content analysis indicate that sexually explicit depictions were portrayed in most of the pictures in the 11 magazines analyzed. Included in these depictions were not only the genitals and erogenous zones of males and females, but also a sizeable number of actual or simulated sex acts involving two or more persons.

## Cartoons and Illustrations

The average proportion of space devoted to cartoons and illustrations in the 11 magazines is about 7 per cent, or approximately 10 pages per issue. In addition to the violence portrayed in some of these illustrations, there is a large amount of sexually explicit material. The following are typical examples.

*Gallery.* One series accompanies an article on sexual techniques: they are small illustrations which depict kissing, caresses and intercourse.

*Oui.* Accompanying an article called "Cocaine Island" there is a two page colour illustration of two naked women on a beach, each with cocaine, some liquor and a pile of bank-notes. A scowling man in fatigues mans a machine gun and an armed motorboat cruises past.

*Hustler.* In an article on A.I.D.S. (Acquired Immune Deficiency Syndrome), a nude smiling woman is depicted kneeling on a bed, apparently being penetrated from behind by a grinning figure of Death, carrying a scythe.

*Swank.* In a two page colour illustration accompanying an article on "Fire of Desire", a woman, half naked, is depicted reclining on a bed. Her body is twisted so that her buttocks are topmost and her legs are open. She spreads her buttocks with her hand, and the lips of her labia are slightly

**Table 53.1**  
**Types of Sexual Acts Depicted in the**  
**Photographs in Eleven Pornographic Magazines: 1983**

Situations/Sexual Acts Depicted in Photographs	No.	%
Person fully clothed	414	9.6
Person partially clothed (bathing suit, underwear)	682	15.8
No clothing on trunk of body (excludes stockings)	521	12.1
Nude part of sexual parts of body shown, but not face	103	2.4
Use of sexual accessories	329	7.6
Person exposed body by loosening/removing clothing	37	0.8
Another person attempted/removed subject's clothing	29	0.6
Female breasts, nipples shown	723	16.8
Buttocks shown	181	4.2
Genitals shown (female pubic hair and labia; male penis and scrotum)	591	13.7
Anus shown	60	1.4
Sexual positioning between two or more persons (no contact)	78	1.8
Masturbation, touching/fondling breasts, buttocks, genitals	252	5.9
Kissing mouth, other parts of body	83	1.9
Oral-genital contact (actual or simulated)	30	0.7
Oral penetration with object	4	0.1
Vaginal/anal penetration with penis (actual or simulated)	11	0.3
Vaginal/anal penetration by finger or object (actual or simulated)	7	0.2
Bondage equipment, clothing, elements	92	2.1
Fetishism	10	0.2
Elements of force against victim, violence, use of weapons	53	1.2
Picture partially censored	12	0.3
Other†	11	0.3
<b>TOTAL</b>	<b>4313</b>	<b>100.0</b>

† Other includes: actual simulated oral-anal contact (2); homosexual relationship (2); victim being murdered (2); and display of pornographic magazines (5).

parted. The other character in the scene is a fireman, and the hero of the story. He is in the foreground of the picture, looking at the woman on the bed. He carries a firehose, the nozzle of which is pointed at the woman's vulva.

*Club.* A monochromatic illustration of a man holding an empty picture frame up to the naked buttocks of a woman who is otherwise covered in black leather. The man is turned, winking at the viewer. The article is called "Ass Crazy".

*Hustler.* An apparently young girl is saying her prayers before bed, overseen by her parents. She smiles and says, "And bless that man at the playground today who let me rub his thingie!" One inference that can be drawn is that the child had enjoyed the experience.

## Types of Sexual Acts Depicted in Text

In the contents of the text in each of the 11 magazines, there is a wide range from articles on general topics to explicit descriptions of sexual violence, degradation, fetishes, sexually deviant behaviour and sexual offences. In the analysis of the text, similar categories were used as those employed in the review of photographs in these magazines.

In Table 53.2, a listing is given of the types of situations and sexual acts described in the mid-summer 1983 issues of 11 nationally distributed magazines. The following are some examples of the text from which these statistics were compiled.

### *Case Study 1*

"... A large wobbling backside somehow seems to solicit punishment. It's like an inflated balloon that makes you want to prick it with a pin or apply a lighted cigarette to it. And the female's ass makes such a satisfying target. The devastation of a balloon gives only a moment's mildly sadistic pleasure — like stamping on a bug — but the buttocks can soak up an astonishing amount of punishment. They seem to fight back, too — insolently judging and glowing under chastisement. This is far better than a totally passive response with no visible or audible return for effort. You know how unrewarding it is to beat up a wet sponge.<sup>12</sup>

### *Case Study 2*

"... I was on holiday in Tangiers in 1964. A road was being constructed, and the laborers were living in tents nearby. One night I approached one of the tents and crawled in. I was afraid the laborers would think I was a thief, or that one of them would shout and jump up if I surprised him in his sleep.

I touched one of them tenderly on his leg, then on his thigh, and when he didn't move I finally put my hand on his crotch. He sat up. Then he saw that I was a white man and he understood immediately. He lay down again. I got his cock out and sucked him off. And then the others awoke — six all together. We went outside and they fucked me.

*Forum:* Why didn't they have sex with each other?



**Table 53.2**  
**Types of Sexual Acts Depicted in**  
**the Text in Pornographic Magazines: 1983**

Situations/Sexual Acts Depicted in Text	No.	%
Person exposed body by loosening/removing clothing	65	8.0
Another person attempted/removed subject's clothing	59	7.2
Masturbation, touching/fondling breasts, buttocks, genitals	168	20.6
Kissing mouth/other parts of body	71	8.7
Oral-genital contact	110	13.5
Oral-anal contact	12	1.5
Vaginal penetration by penis	76	9.3
Vaginal penetration by finger, fist or object	28	3.4
Anal penetration with penis	8	1.0
Anal penetration by finger, fist or object	17	2.1
Homosexual elements	20	2.5
Use of sexual accessories	8	1.0
Bondage equipment, clothing, elements	33	4.0
Fetishism	67	8.2
Incest	5	0.6
Elements of force against victim, violence, use of weapons	30	3.7
Victim raped/murdered	3	0.4
Pornography — users, makers	16	2.0
Strippers, swing clubs, prostitution	11	1.4
Other†	7	0.9
<b>TOTAL</b>	<b>814</b>	<b>100.0</b>

† Other includes: oral penetration by an object (1); thigh intercourse (2); suggestion of vaginal/anal penetration by object (1); contraceptives (3).

*La Rue*: It's not done. An Arab male would lose face if he violated the Arab sexual code of honor. A man will fuck a boy until the youth reaches puberty. Then he cannot touch him anymore. So he will look for another boy or a white man."<sup>13</sup>

### *Case Study 3*

"... I cupped one of her breasts in my hand and sucked on it hard as I began to pump slowly and deeply, bringing my penis almost all the way out with each stroke and thrusting it back in again, moving my hips in a figure-eight action.

I alternated between quick and slow movements, making Joy gasp with pleasure. She lifted her hips violently to match my thrusts until, tossing her head from side to side and raking my back with her fingernails, she let go in an intense orgasm that nearly brought us off the bed.

Now it was my turn. I like to fuck a woman hard to really let her know that she has a man between her legs. I spread her legs wide, bringing my knees up underneath her thighs, and began pumping hard and fast. My balls were slapping against her and the head of my penis was hitting her cervix at each stroke. Joy gasped, 'Oh, darling!' with each thrust and lifted her long legs to give me greater penetration, raking my sides, bucking violently and gripping me firmly with her vaginal muscles until I shot my load deep inside her . . . ''<sup>14</sup>

#### *Case Study 4*

" . . . She didn't know what was coming off at first. She felt me fooling around with her asshole, and she was up to taking two or three fingers easy.

Then I made a fist and began to work it into her. The way I do it is I get my fist around my dick and then work both of them in. I pulled out enough to do this, and then I let her have it fullforce — a ten incher with a fist wrapped around it.

I have to give it to the lady, because she didn't even scream. She just grunted and moved her legs to widen her ass some more. She took the whole thing with hardly a whimper, and I began to jerk off inside her ass. I had my prick in there and one whole hand up to the wrist, and she was letting me pump to the max. She was frigging her clit, and suddenly I felt her stiffen, and then her ass muscles began to contract as she came. I kept on pumping my prick and my fist, and I couldn't hang on. I began to spurt out my scum, jerking off hard, and it was one the best cums of my life.

Since then, Anna Punkerama and I have enjoyed an ideal employee-boss relationship . . . ''<sup>15</sup>

#### *Case Study 5*

" . . . So I let her have it. My hand smacked those plump, round cheeks and the flesh resounded with the impact. She let out a long, slow moan. I rubbed the cheeks and felt the pussy hair peeking out from between them. She begged for more and I gave it to her . . . smack . . . smack! She moaned loving it' . . . She was howling like a wolf, and those bright red, swollen ass cheeks were shaking like jelly . . . And then I pounded her, digging my dick in and out, faster and faster till I was gasping for breath and hit my peak . . . ''<sup>16</sup>

#### *Case Study 6*

" . . . She removed his tie, shirt and bullet-proof vest. She put the vest on and took the gun from its holster. Stroking the barrel along her thighs, she wedged it between her legs, . . . 'Now,' she crooned. 'This is what I want you to do. Handcuff my hands behind my back and push me down face-up.' The water bed surged. 'Fuck me with your nightstick, slow and easy. Then put six bullets inside me and suck them out one at a time. Then you fuck me, beautiful man, slow and long. Do it now . . . don't be gentle, only slow.' . . . ''<sup>17</sup>

#### *Case Study 7*

" . . . Ordering him to his feet, I prepared him for the next ordeal. With the aid of a wide leather posture collar, a tightly laced corset, high-heeled 'training shoes,' and a leather arm restraint, I adjusted Martin's poor posture. I then put a thick, heavy book on his head, and for a predetermined period of 15 minutes I led him around my chamber by a leash, advising him that every time the book fell from his head he would be punished accordingly.

Naturally, the book fell quite a few times, especially when I would unexpectedly change the direction of our stroll or jerk sharply on the leash. Again, my pupil did surprisingly well under such adverse conditions: Nevertheless, he had to be punished for his many failures. This time, the cane was applied to his ass cheeks, again slowly and painfully — one lash for every time he had failed to keep the book from falling . . . ”<sup>18</sup>

#### *Case Study 8*

“ . . . Bill is a guy I’ve been seeing for a couple of months and Andrea is a mutual friend . . . We were drinking a lot and as we got drunker and drunker we started talking about sex . . . I parted her ass cheeks wider and sent my tongue down her crotch. I licked her asshole and hairy cunt . . . She straddled my boyfriend and stuck his dick right into her creaming hole. I saw her shiver and toss her head back as his huge, engorged cock filled her . . . all three of us were rocking and screaming . . . ”<sup>19</sup>

#### *Case Study 9*

“ . . . Saturday night came and people started arriving . . . After about an hour I got such a rush from the dope that I guess I blacked out.

When I finally came to, I was experiencing a wonderful orgasm. Through my half closed eyes I looked down to find that I was completely nude and, to my surprise was being wonderfully eaten by a friend of one of our guests. What really shocked me though was that most of the people from the party were still there, sitting around, watching the show we were putting on . . .

Thomas [her husband] told me that I had gotten so high that I must have thought I was alone and going to bed. In the middle of the party, it seems, I stood up and began undressing and proceeded to lie down on our sofa. Ken, the guy that had been eating me, was sitting at the end of the sofa when I lay down. Then, it seems, I put one leg on the back of the sofa and the other on the floor, which gave him a beautiful view of my wide-open pussy. Everyone began to laugh and say that he should do something, including my husband. Well, it seems he fucked me first and then went down on me . . .

He [Thomas] asked if I needed a dick and I said I sure wanted his. He replied that he would first like to let me fuck someone else. He gently laid me on the floor and asked the guys if they also wanted some. Before the night was over, I fucked every guy there while their wives and dates cheered us on.

Since that night I have become much more relaxed about sex and my body . . . My husband, by the way, asked me to stop fucking everyone I see (including his boss) but I said that he had helped start it and now I needed at least three or four different cocks in me a week! . . . ”<sup>20</sup>

#### *Case Study 10*

“ . . . They slipped in [to the bedroom] and tied her wrists, just as Audrey woke up. She screamed and Jack pretended to be angry and told her to shut up. They removed her nightgown and spread her out, tying her to the bed. Then Sandra began to toy with her bush. ‘Oh, you should shave this one. Honey, it would look so much better. See, like mine,’ and she removed her clothes. Sandra has a beautiful cunt, slick as a baby’s ass. Sandra played with Audrey’s nipples until they were swollen and hard. Then she climbed up on the bed and, placing a knee on each side of Audrey’s head, forced her cunt down on Audrey’s face. ‘Eat me out, suck my pussy, baby. Stick your tongue up inside and find my clit.’ Audrey screamed “no” and yelled for me. I was just outside, watching through the window. ‘I’ll teach you to refuse me, you



bitch,' Sandra said. My cock was so hard I nearly creamed my jeans. Sandra and Jack then shaved Audrey's pussy. Audrey was pleading with them to leave her alone. 'No, baby. No, you are mine,' Sandra said.

Jack was stripped by this time and his cock was large and very hard. He went to Audrey and commanded. 'Suck this, whore.' Audrey looked at it and pleaded, 'No! No! Please don't!' But as Jack fed his cock into Audrey's mouth, she sucked and licked it until he shot his cum down her throat. With tears running down her face, she swallowed it. Then Sandra mounted her and Audrey ate her out. They repeated this, with Jack fucking Audrey in the mouth and ass. Audrey was soon worn out, but they kept it up for most of the day.

I had left and went to town to do some shopping. When I returned they had Audrey collared and on a leash, kneeling down . . . ''<sup>21</sup>

### *Case Study 11*

" . . . She's screaming with pleasure now that the gag's been removed. She knows she's undeserving of the big cock that's just fucked her silly. So don't cry for her, her own tears match her pussy spasms and juicy orgasms. When her master finally let her speak, all she could say was, 'Fuck me again. I'm so helpless without you inside of me. Fill me with cock and cum.' Her master obviously knows the ropes' . . . ''<sup>22</sup>

### *Case Study 12*

" . . . one shapely woman was grabbed by one of the gunmen and pushed into another, smaller dining room. While several horrified, naked diners watched, the woman was pushed down on top of a table and raped at gun-point . . . one of the gunmen, whom police later said was Bruce Garrison, started walking between the aisles where people were lying down and hitting them with his blackjack. Some were hit on the collarbone, some on the spine, others around the face . . . Some couples were startled to see a revolver shoved against their temples as they made love. The gunmen would order the man to pull out of the woman and finish off in her mouth, or to have her jerk him off . . . ''<sup>23</sup>

### *Case Study 13*

" . . . Marlowe struck her hard in the belly, knocking out her wind. She'd braced for the blow, but it came too quick and too strong for her to recover. He grabbed her throat in one hand and pushed her violently back to the couch, ripping her dress from the neck down to her waist. Another vicious rip tore Brigit's lace bra away, exposing her breasts. Anger and betrayal had brought the Fisherman back to life.

'You killed them,' Brigit gasped breathlessly, 'killed them all — raped and slashed 15 young women.'

'Yes, you stupid, filthy bitch,' he hissed. His hand left her throat and brutally squeezed her breasts. He planted his knee firmly in her crotch, pinning Brigit to the couch. She saw the growing erection in his pants and shuddered. He spotted the X-acto knife on the coffee table and grabbed it . . . ''<sup>24</sup>

When a comparison is made between the types of sexual acts (actual or simulated) depicted in photographs in these 11 widely distributed magazines and the types of sexual acts described in the text, a sharp contrast emerges between the proportional emphasis given to the main categories of sexual acts.

Sex Acts Depicted	Photographs	Text
	No.	No.
Oral-genital contact	30	110
Oral-anal contact	2	12
Vaginal/anal penetration by penis (actual, simulated)	11	84
Vaginal/anal penetration by finger, fist or object	7	45
Bondage	92	33
Fetishism	10	67
Elements of force	53	33

In the proportionately larger number of photographs to the text appearing in the magazines, two types of situations occur more frequently: pictures showing bondage; and the use of force or violence against victims. In all other types of sexually explicit depictions, the text, on average, contains five times as many depictions as those appearing in the photographs of: oral-genital contacts; oral-anal contacts; vaginal and/or anal penetration by a penis; vaginal and/or anal penetration by a finger, fist or object; and fetishism.

With the exception of one or two magazines such as *Playboy* in which the text is largely devoted to journalistic contributions, there is a sharp shift between the main emphasis in the photographs and the themes of the text in the other pornographic magazines. **In most of the photographs showing sexual acts which may involve two or more persons, while the portrayal is often vividly graphic, the situations depicted may be simulations rather than actual sexual acts performed when the photographs were taken. This is especially true of depictions which apparently portray vaginal or anal penetration by a penis, finger, fist or object.**

In contrast, there is no pretense at simulation in the types of sexual acts described in the text of these magazines. Sexual acts are fully and explicitly described, often in lugubrious detail. The examples of the types of situations described are exemplified by the excerpts which have been given. These magazines, legally distributed across Canada, are considered to be 'soft core' pornography, i.e., in contrast to 'hard core' pornography, they are not thought to deal with an explicit and graphic depiction of the full range of sexual behaviour and acts. It is evident from the content analysis that in the text of some so-called 'soft core' pornographic magazines, there is a substantial element of 'hard core' matter being presented.

## Sexual Depiction of Children in Text

There were 24 situations (3.0 per cent) in the text of the 11 nationally distributed pornographic magazines in which children and youths were por-

were portrayed in sexually explicit depictions. The youngest child described in situations of this kind was 11 years-old; the usual age range was between 13 and 17 years-old. The references to children involved in sexually explicit behaviour or acts were primarily contained in two magazines, *Forum* and *Club*.

The only mention of children in the June, 1983 issue of *Playboy* was a reference to an anti-child pornography statute in Chicago. *Hustler's* references to children included: the assertion that cold cereal was invented to inhibit children from masturbating; and an eight year-old girl who had found a booklet entitled 'Exotic Sexual Positions from Around the World' in a box of Cracker Jacks. *Penthouse* and *Hustler* expressed disapproval of pedophilia, particularly of the North American Man-Boy Love Association (NAMBLA).

In *Club*, there were two sexually explicit depictions of children, one involving oral-anal sex, the other referring to incest. In a vignette in the magazine's "Steiner Sex Probe", a boy and a girl, both at the age of puberty, are described as they are returning home walking through a park.

"... She let me go on stroking her ass and said how nice it was that at least I didn't think she was an ugly freak ...

I ... told her I'd like to prove what I'd said by kissing her ass if she'd let me. There was another long pause, then she whispered 'All right, George.' I think she was in heat. We went behind some bushes and she took her panties right off. Then she lay face down in the grass and remained very still apart from her heavy breathing. I lifted her skirt and marveled all over again at the breathtaking size and beauty of her ass. I began to caress and squeeze the luscious white cheeks. Then a really amazing thing happened. I suddenly felt the urge to be cruel to her ass: to whip it and cane it until it was all red and bleeding. This was a feeling I'd never had before and I only just managed to fight off the urge. God alone knows what would have happened if I'd given in to it. Screams of 'rape' and 'murder' I wouldn't wonder' ...

I kissed and tongue-lapped each cheek in turn, taking my time over it. Then I opened her up and buried my face deep into the enormous cleft. I found her musky asshole and licked that too. I was about to shove my tongue up into her intestines but exploded into my pants before I had time ..."<sup>25</sup>

The second reference to children in *Club* is a letter purportedly written to the "Steiner Bureau" referring to incest and containing a reply given by the magazine's columnist.

"Karl Steiner: Like Holly V. (Club 8/12). I'm in love with my brother. I'm 17 and he's 24. He's never screwed me or even asked, but I've been rubbing and sucking him off regularly since I was around 11. It all began during a game of 'doctors and nurses.' I guess he was really too old for that game, but I wasn't. I'm very good at getting him off and love the taste of his cum. He says I handle his cock better than any girl he's ever dated. He has a really fine cock that makes all the others I've seen and handled look small. Am I doing wrong in pleasuring my brother this way?

Gina T.,  
Newark, New Jersey

Yes, but only because there's no future in it for you. You are old enough now to understand that incest may be okay for the occasional kick (provided



there's no procreation) but seldom works out well in the long run. Find yourself a nice well-equipped guy outside of the family."<sup>26</sup>

In the content analysis of the text of the 11 adult sex magazines, most of the references to children and youths occur in the 'Open Forum' and the 'Forum Advisor' sections of *Forum* magazine. These descriptions, purportedly received from the magazine's readers, refer without exception to some form of sexually deviant behaviour, fetishes or situations involving incest. In the first reference, a boy "between sixth and seventh grades" and his mother are alleged to have experienced the following sexual activities.

"... [my mother] told me that we needed to talk. She told me that since my father's death, she had began wearing diapers again (she had been a bedwetter until the age of 19) ...

That night she came into my room to help me with my own diapers, although I usually did this myself. While she was snapping my plastic pants, I asked her if she was wearing her diapers. She lifted her dress and showed me her plastic pants ...

At first I was afraid to show her when I'd had a bowel movement in my diapers, but she was obviously used to cleaning up her own messy bottom and thought nothing of mine.

Soon my mother was walking around clad only in her nightie and diapers. We started talking about sex and she gave me my first handjob. Then she gave me my first blowjob. One night when I came home from a school basketball game, she complained to me about her messy diapers, and I offered to change her. As soon as her diapers were off. She pulled me down beside her onto the bed.

Since then, our lives have been quite exciting ... "<sup>27</sup>

In a letter, apparently written by a male subscriber, a description is given of his boyhood experience with incest.

"... The first time was when I was 16. When I was 15, my 41 year-old aunt seduced me and taught me how to suck on her pussy for hours at a time. I would eat her until she'd had at least four orgasms. She was a massive woman with large breasts and a large, hairy mons. Late at night I would sneak into her room (she lived with us) and I always ended up under her nightie, eating her ... "<sup>28</sup>

Brother-sister incest is the theme of another letter printed in *Forum*. A young man claims that his 17 year-old sister found him using an inflatable love doll while he was having "a great screw".

"... She was shocked, but we discussed it. I told her I was horny and lonely, and she said she would help me remedy the situation.

She and I went out on a 'date' and went dancing. My sister looked so sexy, I knew she was turning heads all over the room. She let me rub my cock on her thighs when we danced and when we got home that night, she gave me some oral sex ... "<sup>29</sup>

The letter concludes with the observation that the siblings intend to move to another state where they can live anonymously as lovers.

Under the caption “An Exciting Solution”, the publishers of *Forum* printed a letter purportedly received from a father who describes his sexual feelings towards his 14 year-old daughter.

“ . . . My daughter Tracy is 14 years-old, tall, slim and blonde. Years of gymnastics and swimming have resulted in a firm young body — not yet that of a woman, but no longer a child’s. I have seen my daughter’s naked body often, but only glanced casually, although even at a glance it is obvious that she is going to be a beautiful young woman.

Her breasts are still small, but they are well rounded. Her nipples are tiny, pink and delightful. She seems to be unaware of her growing beauty.

One Saturday morning she complained of a severe tummyache. Rather than take her to a doctor, I consulted with a friend who is a registered nurse. She suggested that Tracy have an enema since she was extremely constipated.

My friend told me how to prepare the solution. I brought a large towel into the bedroom and laid it on the bed. I told Tracy to raise her hips and pull her nightie up. I did not watch her.

I decided it would be easier to lubricate the nozzle. Tracy was lying on her back, legs together, knees raised and her nightgown up to her waist. I later learned that I should have had her lie on her side, but I didn’t know. I asked Tracy to open her legs, which she did, but only a few inches. I gazed upon her lovely young body. Even though she is a natural blonde, her pubic hair is quite dark by contrast. I was struck by the lips of her vulva, which were very small and tightly closed. Since she had barely opened her thighs, I grasped her ankles and did it myself. I was amazed to see the lips of her pussy open like a flower, exposing her secret place. Inside, she was a delicate pink color.

By this time, it was hard not to stare and even more difficult to conceal my growing erection. Putting one hand on her thigh, I bent over to slide the nozzle into her rectum. My face was inches away from her vagina, I almost forgot about the enema, but the nozzle in my hand reminded me why I was there.

I quickly and gently administered the enema, and then helped Tracy to the bathroom. By that evening, Tracy was greatly improved, and I realized that I had enjoyed one of the most erotic moments of my life. As I reflected on our encounter, I couldn’t help but wonder what it would have felt like, to Tracy and to me, if I had plunged my penis into her vagina. I suppose we’ll never know.”<sup>30</sup>

The theme of sex education for male youths between 13 and 15 years-old is dealt with in a letter purportedly written by a nurse specializing in contraceptive counselling.

“ . . . Since the male doctor doesn’t care to instruct boys [in sex education], he has delegated this responsibility to me.

I take a boy, usually around 13, sometimes as old as 15, and have him undress in a private room. Then, when he is wearing only a brief robe, I tell him about the mechanics of sex, and about contraception and venereal disease. Then comes the good part.

I stroke the boy's cock until he has an erection. Sometimes the cock is already hard from the excitement of discussing this subject with an attractive young woman. When I feel the tension in the balls increasing and his penis twitching, I increase my stroking until he ejaculates.

When the physical task is over, the boy also knows how to masturbate. He also knows he's normal since he was able to come. To date, I have jerked off about 121 boys and it's all perfectly legal!"<sup>31</sup>

A somewhat similar episode is recounted in *Forum* involving a 15 year-old and an adult nurse. Other letters said to have been received by this magazine depict sexual acts involving 13 and 17 year-old males and 16 and 18 year-old females.

Characteristic of the sexually explicit depictions of children and youths in *Club*, and particularly in *Forum*, is the description of acts of this kind as though they constituted normal sexual behaviour in which children become involved. The situations described and the contents of the letters purportedly received from readers are written in a remarkably uniform and pre-packaged style evincing on the part of the writers a consistently well informed knowledge of these matters and with all of them having the literary ability to provide explicitly graphic depictions of children and youths involved in sexually deviant acts. **In most of these situations, the children and youths are portrayed either as passive novices who are being tutored about sexual behaviour, or more often, they are cast as eager and active participants who willingly have intercourse with adults. These depictions do not accord with the findings of the several national surveys undertaken by the Committee.**

At least one inescapable inference which may be drawn from the depiction of situations in which children are portrayed engaging in sexually explicit behaviour with adults is that these are acceptable and normal learning situations for children. While the publishers of the magazines do not formally endorse this viewpoint in their publications, it is noteworthy that this perspective is not condemned and that the materials described appear in their publications.

## Gender of Contributors

Determining the gender of the persons whose letters were published and of columnists and editorial staff members is one means, albeit imperfect, of assessing the circulation market for pornographic magazines. In this regard, a count was made in relation to the sex of these persons.

The gender of some writers and editorial staff members could not be identified; of those for whom this was feasible, a majority were males and approximately a quarter were females. It is unknown how many of the names printed were genuine or fictitious. The text of the letters is of such a consistently uniform style that it appears that considerable editorial assistance may have been



Sex of Writer	Published Letters		Columnists/ Editorial Staff	
	No.	%	No.	%
Male	155	60.8	87	74.4
Female	73	28.6	28	23.9
Unknown	27	10.6	2	1.7
TOTAL	255	100.0	117	100.0

rendered. In light of the fact that all of the 11 pornographic magazines are primarily intended for the market in the United States, and that in quite a few instances where correspondents lived was not specified, this source of information does not provide a reliable means for determining what proportion of the readers may be Canadians. There is no indication that a checking procedure is adopted with respect to confirming the identities of persons writing letters to these magazines.

## Advertisements

In the content analysis of the advertisements contained in the magazines reviewed, a distinction was made between 'general' and 'sexually oriented' items. The former category included items such as liquor, automotive goods, men's cologne, tobacco products and electronic equipment, while the latter category subsumed sexually oriented items, such as: telephone sex; listing of pornographic magazines, films and videotapes; and sexual aids and accessories. Specific items referred to in the advertisements were identified and tabulated. This procedure was adopted since a single advertisement could list several items. A further distinction made was whether the items could be purchased in retail outlets or could only be obtained by mail.

The magazines' advertisements listed a total of 840 products. The proportional distribution of general and sexually oriented items varied widely between different magazines. On average, two in three advertisements (67.9 per cent) were sexually oriented ranging from 4.6 per cent in *Playboy* to 92.8 per cent in *Hustler*. The proportion of sexually oriented products advertised in the other magazines was: *Penthouse* (38.3 per cent); *Genesis* (44.4 per cent); *Playgirl* (64.0 per cent); *Gallery* (65.2 per cent); *Oui* (84.5 per cent); *Forum* (89.2 per cent); *Cheri* (90.9 per cent); *Club* (91.0 per cent); and *Swank* (92.4 per cent).

The June, 1983 issue of *Playboy* contained five advertisements for sexually oriented products, four of which were for 'in-house' products (i.e., relating to the magazine itself), and the fifth advertised books with titles such as the *100 Best Opening Lines* and the *Shy Person's Guide to a Happier Love Life*. In contrast, over nine in 10 products advertised in *Hustler* dealt with sexually oriented items, such as telephone sex, pornographic matter and sexual accessories.

The 'general' products advertised in *Hustler*, all of which could only be obtained by mail, included items such as caffeine stimulants, pseudo-drugs, hair restoratives and a tear-gas revolver.

**Table 53.3**  
**Types of Sexually Oriented Products Advertised**  
**in Eleven Pornographic Magazines: 1983**

Type of Sexually Oriented Product Advertised	No.	%
<i>Sold at Retail Outlets</i>		
• Telephone sex	166	29.1
• In-house advertisements	33	5.8
• Films, videotapes	3	0.5
• Condoms	2	0.3
• Pornographic magazines	2	0.3
<i>Mail Order Products</i>		
• Pornographic books, magazines	74	13.0
• Sexual aids	51	9.0
• Films, videotapes	42	7.4
• Catalogues	34	6.0
• Clubs, hotlines to meet other persons	30	5.3
• Sex appeal enhancement drugs, lotions	28	4.9
• Slides, photographs	26	4.6
• Condoms	19	3.3
• Lingerie	16	2.8
• Penis enlarger	12	2.1
• Seduction aids	11	1.9
• Love dolls	5	0.9
• Sex jokes	4	0.7
• Audio cassettes	4	0.7
• Film processing	2	0.3
• Sex games (cards)	2	0.3
• Female contraceptives	1	0.2
• Sex letters	1	0.2
• Sexual self-improvement exercises	1	0.2
• Fetishism items (e.g., worn underwear)	1	0.2
<b>TOTAL</b>	<b>570</b>	<b>100.0</b>

In its review, the Committee found that there was a direct correlation between the variety and explicitness of sexual depictions in the photographs and text of these magazines, and the types of products being advertised. An instance of this was advertisements for telephone sex in which a customer is invited to pay for a sexually explicit telephone conversation with a woman. In *Club*, for example, there was a full page colour advertisement of a nude female model who is parting the labial lips of her vulva with her fingers. The accompanying caption reads: "I'd like to show you the position that I love best that reveals the most of my PINK FLESH . . . I know you'll call".<sup>32</sup>

The magazines having the most advertisements for telephone sex with a woman were: Hustler (63); Club (34); Oui (28); Swank (21); and Cheri (19). In comparison to the magazines having none or fewer of these kinds of advertisements, those that had the highest proportion were also those having proportionately more sexually explicit depictions in the photographs and text constituting the substance of the magazines.

Pornographic magazines and books were the second most frequently advertised product in the issues reviewed. Some of the titles listed were:

- The Transsexual Phenomenon ("Girls with huge cocks, studs with big boobs")
- Women Who Love Animals
- Shaved Review ("close-ups of shiny pussies . . . all shaved and clean")
- Milk ("huge milky tits")
- Girls Who Eat Cum
- Up the Ass
- Big Brown Jugs
- Mixed Meat

The wide assortment of sexual aids advertised included items such as vibrators and anal intruders. In Chapter 51, *Importation and Seizure*, it was found that only a relatively small proportion of the items seized were films and audio-visual cassettes. One measure of the incremental growth in the popularity of these types of pornographic materials is provided by their listing in the advertisements of the 11 magazines. **If only the pornographic matter listed for audio-visual films and cassettes, magazines and books, and photographs and slides is considered, then of the 145 such items advertised, about a third (31.0 per cent) were films and videotapes. As noted elsewhere in the Report, the market for these products can be expected to expand sharply as audio-visual equipment becomes cheaper and is more widely purchased.**

## Advertisements Featuring Children and Youths

Of all the advertisements listing sexually oriented products, one in 10 (10.0 per cent) focussed in one way or another on youths. While the words, child, boy or girl are not used and no ages are specified, the listing of these advertisements which unmistakably identify youths reflects the perception of advertisers of the widespread appeal of having sexual activities with or between young females. Male youths are referred to in only three listings. One in six (17.5 per cent) of the advertisements refers to incest or incestuous behaviour.

Unlike the depiction of other sexually oriented products in the advertisements printed in these magazines, those having an emphasis on youth are seldom accompanied by photographs. Those having pictures are smaller than



**Table 53.4**

**Types of Sexually Oriented Products Featuring Youths Advertised  
in Eleven Pornographic Magazines: 1983**

Title of Item Advertised	Format	Magazine
After School Suck Off	Film	Hustler
All You Can Suck Mom	Film	Hustler
Babyface Nymphos	Magazine	Hustler
Bosum Cunt (in which Young Tina arrives to babysit and gets a complete educa- tion in cocksucking and fist-fuck- ing)	Film	Hustler
Candid Cheerleaders	Photograph	Hustler
Cheerleaders	Film	Hustler
Cheerleader Gang	Film	Hustler
Cheerleader Suck Off	Film/Magazine	Hustler
Cherry Bustin	Film	Hustler
Cherry Poppin	Magazine	Hustler
Chubby and Tubby Gals (all under 20 years)	Magazine/ Photograph	Hustler
Class of '69	Film	Hustler
Cock Crazy Coed	Film/Magazine	Hustler
Coed Cocksucker	Film	Hustler
College Girls Vacation	Film	Penthouse
Creamy Virgin Lips	Film/Magazine	Hustler
Dynamic Duos (including an older man/younger girl)	Book	Swank
Experience with Virgins	Book	Club
First Cum	Film	Hustler
First Fuck	Film	Hustler
First Time Fuckers	Magazine	Hustler
Forbidden Sexual Fantasies (including Chapters on . . . Fami- lies)	Book	Swank
Foxy (See . . . an older man enter a little shaver)	Book	Swank
Golden Showers Sister	Magazine	Hustler
Hand Job (in which Seka shows her young sister how to suck, fuck and stroke a stiff cock)	Film	Hustler

**Table 53.4 (Continued)**

**Types of Sexually Oriented Products Featuring Youths Advertised  
in Eleven Pornographic Magazines**

Title of Item Advertised	Format	Magazine
Her First Dick (a Little Suck Off Magazine)	Magazine	Hustler
High School Memories	Book	Penthouse
Incest Expose	Book	Club
It's So Wet Daddy	Film	Hustler
Little Hot Panties (in which her hot pussy and wet panties make a perfect playground)	Film	Hustler
Mama's Hot Mouth	Film/Magazine	Hustler
1001 Erotic Nights (in which a fisherman seduces two nymphet daughters of a noble- woman)	Video	Swank
Palace of Pleasures (including naughty schoolboys)	Book	Forum
Peach Fuzz Perverts	Magazine	Hustler
Pom Pom Girls (young looking model depicted)	Magazine	Hustler
Pottie Pussies	Film/Magazine	Hustler
Sailor and Babysitter	Film	Penthouse
Sexual Knowledge (in which explicit, intimate, photo- graphs expose the very personal details of teenage sex, orgasm, puberty, masturbation, exotic posi- tions, oral sex). The accompanying photograph depicts two nude youths and a child.	Book	Club
Shaved Chicks (including . . . smooth & slick young girls)	Book	Swank
Six Cock Coed	Film	Hustler
Slick (including young, hairless sweeties . . . wild little shavers)	Book	Oui
Sorority Sex	Film	Hustler
Sorority Sucking (a Little Suck-Off Magazine)	Magazine	Hustler
Sorority Sweethearts	Video	Swank
Stepsisters	Book	Forum
Sucking Sister (young looking model depicted)	Magazine	Hustler

**Table 53.4 (Concluded)**

**Types of Sexually Oriented Products Featuring Youths Advertised  
in Eleven Pornographic Magazines, 1983**

Title of Item Advertised	Format	Magazine
Suck-Off Student	Film	Hustler
Sugar Daddy's Darling	Film	Hustler
Swedish Chickies (We have what's Forbidden in U.S.A.). Mailing address given is in Sweden.	Film/Magazine	Swank
Taboo (including family sex: mom, dad, sis and brother)	Book	Oui
Talk Dirty To Me, Part II (in which John seduces the teenage daughter of one of his ladyfriends)	Video	Swank
Teen Lover	Audio	Club
Teenage Dessert	Video	Club
The Younger the Better	Video	Club
Virgin Rapture	Audio	Hustler
xxx Fairy Tales (including Goldilocks, Cinderella, Jack and the Beanstock)	Book	Swank
Young and Hot Nymphs	Book	Club

average and are reproduced in black and white. Of the 57 titles, 56 listed mailing addresses in the United States.

Whether the pornographic matter being advertised was genuine child pornography (i.e., actually featuring children) is unknown. There is no doubt, however, that at the very least, it was pseudo-child pornography; the number of advertisements involved suggests that there is a sizeable market for matter of this kind. Over a half of these items (52.6 per cent) were available in the form of films and/or videotapes. Matter of this kind was typically more expensive than the sexually oriented magazines and books being advertised.

## Summary

The content analysis of the photographs, text and advertisements of single 1983 issues of 11 nationally distributed magazines indicates that there was extensive depiction of sexually explicit behaviour and acts in these publications. In general, the depictions given in the text were more varied and explicit



than those portrayed in photographs. There was a progression from photographs and text to advertisements involving the depiction of children and youths. In the photographs, few references were made to youths. In the text of the magazines, 3.0 per cent of the sexually explicit descriptions portrayed children and youths with the ages of the children being specified in some of the articles. Ten per cent of the sexually oriented advertisements in one way or another featured children and youths.

On the basis of this content analysis, it is evident that an operational definition of some of the salient features of pornography can be developed, one which is based on the listing of the portrayal of specific types of sexual behaviour and acts. A definition incorporating the elements documented could serve as the basis for the framing of statutes whose purpose is to limit the accessibility of matter of this kind to children and youths.

As documented in the following chapter, while it was found in a nationally representative sample that Canadians were divided in relation to whether accessibility to pornography by adults should be restricted, there was considerable unanimity that children and youths should not be exposed to the types of sexually explicit depictions described in the findings given in this chapter.

## References

### Chapter 53: Contents of Pornography

<sup>1</sup> All magazines, except for *Club*, were obtained for the June, 1983 issues. In May, 1983, the June issue of *Club* was unavailable and the July, 1983 issue was used in the content analysis. The magazines included were:

(1) *Cheri*, Volume 7, Number 11, June, 1983 (Canadian edition); (2) *Club*, Volume 9, Issue 6, July, 1983 (Canadian edition); (3) *Forum*, Volume 12, Number 9, June, 1983; (4) *Gallery*, Volume 11, Number 6, June, 1983; (5) *Genesis*, Volume 10, Number 11, June, 1983; (6) *Hustler*, Volume 9, Number 12, June, 1983 (International Edition); (7) *Oui*, Volume 12, Number 6, June, 1983; (8) *Penthouse*, Volume 14, Number 10, June, 1983; (9) *Playboy*, Volume 30, Number 10, June, 1983; (10) *Playgirl*, Volume 11, Number 1, June, 1983; and (11) *Swank*, Volume 30, Number 5, June, 1983.

<sup>2</sup> Audit Bureau of Circulation. *Circulation Statistics*, 1981.

<sup>3</sup> *Penthouse*, reported estimate.

<sup>4</sup> Audit Bureau of Circulation, *op.cit.*

<sup>5</sup> *Hustler*, *op.cit.*, "Love Slave", pp. 86-95.

<sup>6</sup> *Club*, *op.cit.*, reported estimate.

<sup>7</sup> Audit Bureau of Circulation, *op.cit.*

<sup>8</sup> *Club*, *op.cit.*, p. 4.

<sup>9</sup> *Oui*, *op.cit.*, pp. 12-16.

<sup>10</sup> *Hustler*, *op.cit.*, pp. 56-57.

<sup>11</sup> *Oui*, *op.cit.*, pp. 47, 49.

<sup>12</sup> *Club*, *op.cit.*, p. 42.

<sup>13</sup> *Forum*, *op.cit.*, pp. 64-69.

<sup>14</sup> *Penthouse*, *op.cit.*, pp. 29-30.

<sup>15</sup> *Swank*, *op.cit.*, p. 91.

<sup>16</sup> *Oui*, *op.cit.*, p. 22.

<sup>17</sup> *Forum*, *op.cit.*, p. 46.

<sup>18</sup> *Cheri*, *op.cit.*, p. 81.

<sup>19</sup> *Oui*, *op.cit.*, pp. 6-7.

<sup>20</sup> *Penthouse*, *op.cit.*, p. 16.

<sup>21</sup> *Ibid.*, p. 20.

<sup>22</sup> *Club*, *op.cit.*, p. 5.

<sup>23</sup> *Swank*, *op.cit.*, p. 72.

<sup>24</sup> *Hustler*, *op.cit.*, p. 104.

<sup>25</sup> *Club*, *op.cit.*, p. 40.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Forum*, *op.cit.*, pp. 78-79.

<sup>28</sup> *Ibid.*, p. 106.

<sup>29</sup> *Ibid.*, p. 94.

<sup>30</sup> *Ibid.*, pp. 85-86.

<sup>31</sup> *Ibid.*, p. 90.

<sup>32</sup> *Club*, *op.cit.*, p. 99.





## Chapter 54

# Circulation, Accessibility and Purchase

In accordance with its Terms of Reference, the Committee reviewed the issue of the accessibility of pornography to children and youths. The sources of information assembled were: a review of reported and available circulation statistics for publications audited by the Audit Bureau of Circulation; an accessibility study of the display of pornographic retail outlets in a number of cities across Canada; and a component of the National Population Survey which dealt directly with the buying habits and opinions concerning pornography of a nationally representative sample of Canadians. This chapter presents findings obtained from these sources.

For purposes of this analysis, the working definition of pornography that was adopted, included:

1. Magazines referred to as: girly, adult, softcore, sophisticates or men's magazines. They are characterized by: a glossy cover page, a male or female in nude or semi-nude stances, and bold typeface announcing contents inside of a sexual nature. The contents have male and female nude and semi-nude photographs.
2. Booklets 5" x 7" that have a glossy cover page and bold-type printing announcing stories or erotic letter exchanges dealing exclusively with sexual themes. They typically contain written text plus a few photographs.

While the findings of this chapter show that there is an enormous distribution of pornographic matter across Canada and that many Canadians have bought pornography at least once during their lives, reliable information is extremely scarce when it comes either to investigating the pornography trade on a national basis, or of learning about Canadians who buy these materials. In this regard, the present review of the distribution, accessibility and purchasing habits of Canadians would appear to be without precedent in Canadian experience. Despite the great size of this market, the findings clearly show that a majority of persons believe that there should be an age limit in relation to the purchase of pornography.

## Audit Bureau of Circulation

The Committee received the co-operation of the *Audit Bureau of Circulation* (A.B.C.) which is believed to be the only repository of information possessing factual information concerning the audited circulation of major publications. The information made available by the A.B.C. provided a basis for estimating changes in the extent, volume and regional distribution of sales from 1965 to 1981, as well as the minimal market value of the pornography business in Canada.

The A.B.C. is a non-profit agency established by periodical publishers, advertisers and advertising agencies as an instrument of self-regulation for the publishing industry. The Bureau's specific functions include: to prepare and issue standardized statements of circulation and other information reported to it by the member publishers; to verify the figures contained in these statements by means of an auditor's examination of the publishers' records; and to distribute this information, without editorial commentary. The A.B.C. disseminates circulation figures for 132 magazines and farm publications and 1900 United States and Canadian daily and weekly newspapers. Approximately three-quarters of all circulation of print media available to advertisers in the United States and Canada are reported according to A.B.C. standards. Since circulation figures provide the basis for determining the advertising rates of various publications, the A.B.C. provides an essential service to publishers and prospective advertisers.

The Board of the A.B.C. is constituted to ensure that purchasers of advertising have majority representation. Of the 33 Board members, 11 are advertisers and seven are representatives of advertising agencies (representation also includes three magazines, eight newspapers, two business publications, one farm publication, and the director of one Canadian periodical publication). The A.B.C.'s reports are prepared twice annually. Publishers submit figures indicating their total sales for each month and their average circulation for the six month period. The publishers also submit geographic analyses of total paid circulation of each magazine for a one month period of their choice (that is, a breakdown of the circulation in specific geographic areas for the selected month).

Although the A.B.C. proved to be an indispensable resource for the Committee's research, the findings provided must be interpreted in recognition of certain limitations. The A.B.C.'s records only provide circulation figures for "adult" magazine titles having the largest circulation, and thus, its records by no means represent a comprehensive listing of the circulation of all pornographic magazines. In addition, the list of publications whose circulation is reported by the A.B.C. has changed from time to time and contains no French language titles.

A.B.C. figures were available for six adult magazines in 1965, for seven in 1970, for 10 in 1975 and for 12 in 1980. The increase over time in the number

of reported publications is attributable to the increase in the number of pornographic magazines capable of attracting significant advertising revenues. Few sexually explicit magazines carried substantial amounts of advertising in 1965. With the passage of time, there has been a steady increase in the number of companies willing to place advertisements in certain pornographic magazines and a comparable growth in the number of “adult” magazines deemed sufficiently “acceptable” to attract advertisers. Today, more publishers of pornographic magazines need to establish advertising rates, and hence, more of them are having their circulation figures audited by the A.B.C. A total of 17 different adult magazine titles appears in the A.B.C.’s listings between 1965 and 1981.

### Changes in Number and Content: 1965-81

The Committee contacted magazine wholesalers and distributors for information concerning the number of “adult” magazine titles on the market in 1965. In the judgment of these informants, no more than about 30 different pornographic magazines were available at that time, including such titles as: Ace, Escapade, Esquire, Fling, For Men Only, Gem, Gent, Jem, Male, Mayfair, Men, Men’s Adventure, Mister, Nugget, Playboy, Rogue, Stag, Stud and Swank. Of these publications, only three have survived intact, while two have been revamped significantly.

Police sources estimate that at present there are several hundred different “adult” magazine titles available in Canada. This information was confirmed in part by the findings obtained in the National Accessibility Survey. Persons completing the questionnaire for that study were asked to list up to 20 pornographic magazine titles being sold at each retail outlet examined. A total of 540 different titles was documented (Table 54.1).

**Table 54.1**  
**Pornographic Magazine Titles Distributed in Canada: 1982-83**

– A –	All Man All Natural Poses Auto Buff	Beaver Hunt Bedside Advisor Beef Cake Big Boobs Big Book Big Bosoms Big Breasts Big Breasts Plus Big Brown Jugs Big Bucks Biker Lifestyle Bi-Swinger Bitches and Boots Black Beauties
Ace Action films Adam Adam Choice Adam Classics Adam Film World Adelina Adult Cinema Advisor Aggressive Women Alive All Canadian Honey	– B –  B, B & B Babe Baby Face Babydolls Bachelor Bad Girl Ball Busters Ballsy Babes	





Table 54.1

## Pornographic Magazine Titles Distributed in Canada: 1982-83 (Continued)

Hara Kiri	- K -	Modern Screen More Than a Handful Motorcycle Women Movie X-rated Mud Wrestler	
Hard			
Hard Rocks			
Harlots in Harness			
Harvey			
He and She		Kazanobae Key (the) Kinks Kinky Letters Knack Knave Knight Knockers and Nipples	- N -
Heartthrob			
Heavy Metal			
Hero			
High Heels			
High School		- L -	National Collection National News Nationwide Swingers Naughty, Butt . . . New Direction New Man and Woman New Swingers (the) Nous Nude Nugget Numbers Nymphet
High Society			
Holiday Special			
Hollywood Sexy			
Honey			
Honey Pies		Late Night Extra Leg Review Leg Show Legomania Legs, Boobs and Lingerie Les Girls Lesbian Action Lesbo Lust Letters Letters Magazine Liberated Lovers Lick'n Promise Limbo Line and Form Lipstick Live Love Love At Touch Love Collection Love Guide Lovebirds Lovebirds Encyclopedia Loverboy Lovers Lovers Fantasies Lui Lusty Ladies	- O -
Hooker			
Hooker Handbook			
Hot Ass			
Hot Blondes			
Hot Buns	Off Limits Office Party Lust OH AYPO Olympus Options Oral Sex Digest Orgy Girls Original Fox Oui Oui Letters Over Daddy's Knee		
Hot Fun Sister			
Hot Panties			
Hot Picks			
Hot Rods			
Hot Shot	- P -		
Hot Spots			
Hot Stuff			
Hot Virgin			
(the) Hot New Game			
Heure Douces	P.G. P.M. P.7.0. Pain Paragon Park Lane Partner Party Girls Penthouse Penthouse Calendar Penthouse Forum Penthouse Variations (Best of) Penthouse (Best of) Penthouse Letters (the Girls of) Penthouse Person to Person Pick-Up Pictorial Piece Makers Pillowtalk Pillowtalk Booklet Pink Pixie		
Howto			
Hub			
Human Advisor			
Human Digest			
Hustler			
Hustler Sex Play			
Hutch			
- I -			
Images Sexuelles			- M -
In Touch			
I.T. (In touch for men)			
International			
International Chesty			
Organ		Macho Madame X Make it Male Man Alive Man's Action Man's World Mandate Manhattan Mayfair Mayflower Men Men of Action Men Only Mink Misfits Miss Tits Misstress	
International H & E			
International Harvey			
International Sex-			
ploitation			
Intimacy			
Intimate Acts			
Intimate Letters			
Iron Horse			
- J -			
Jammon			
Journal of Love (the)			
Joy Stickers			
Just Great Legs			

Table 54.1

Pornographic Magazine Titles Distributed in Canada: 1982-83 (*Continued*)

Photo	Raven	Stranger Lovers
Photo Selection	Real Confessions	Stud
Platinum	Response	Sugar and Spikes
Play Bird	Riviera	Super Boobs
Play Guy	Rubbing Off	Super Cycle
Playbirds Continental	Rustler	Super Girls
Playboy	Rustler Centerfolds	Super Love Collection
Playboy Advisor	Rusty	Super Male
Playboy Album (in French)		Super Studs in Drag
Playboy Bunnies		Superstars of Sex
Playboy Business	- S -	Swank
Playboy Calendar		Swap
Playboy Fashion	Satin Dolls	Swapping Wives
Playboy-Playmate Collection	Savage	Swat
Playboy Special Holiday Issue	Scoring	Sweetcocks
(the Girls of) Playboy	Secret Seduction	Swing
Playdames	Seka	
Players	Seka's Calendar	- T -
Players Calendar	Sensuous Letters	
Playgirl	Sex Connection (the)	Tabu
Playgirl Calendar	Sex Play	Talks
Playgirl Cartoons	Sex Secrets of the Sisterhood	Teased, Tormented and Transformed
Playgirl Entertains	Sex Stars	Teasers
Sexy Men	Sex Tapes	Technique Modern de L'amour (les)
Playgirl Pictorial	Sex To Sixty	Teens, Tits and Twats
Playgirl Special	Sexe	Tender Teasers
Holiday Issue	Sexology	3 'n 1 (Three in One)
(the Best of) Playgirl	Sexology Today	Tiny Cunts
Playgirl's Best Cartoons	Sexuelles	Tip Top
Playgirl's Men of Europe	Sexy Humour	Tit World
Playgirl's Portfolio	Sexy Men	Titers
Playmate Calendar	Sexy Special	Titillating Experience
Playtimes	Sexy Starlett	Tittes
Pleasure	Seyco	Titties
Pleasure Seekers	She	Toilet Graffiti
Plus	Show	Tomorrow's Man
Porn Stars	Silky	Topside
Pounce	Sin Sisters	Torrid Bitches
Pretty Girl	Sir	Torso
Prevue	Sizzler	Touch
Private	Skin Flicks	Transexual Bonanza
Private Letters	Skirts Up	Transsexuals
Private Pilot	Sleeping Tall	Trio
Prize Winners	Sluts and Slobs	True Police
Probe	Smile	Turn-On
Pub	Smuck	Turn-On Letters
Purr	Snatch	TV in Rubber
Puss 'N Boots	Souvenir Portfolio of David	
	Spankers Delight	
- Q -	Special Edition	- U -
Queen Bees	Spike Team	
	Stag	
- R -	Stag's Golden Girls	Ultra Erotic (Gourmet Edition)
	Stage	Union
Rammer	Stallion	Unite
Rapier	Stars	Uptight Females
	Stiff	



Table 54.1

**Pornographic Magazine Titles Distributed in Canada: 1982-83 (Concluded)**

- V -	Virile Man Viva	X-rated Movie Hand- Book X-rated Movies (Review)
Variations (the Best of) Variations Velvet Velvet Erotic Film Velvet Foxes Velvet Portfolio Velvet Talks Velvet Touch Velvet's Vibration Vibrations Video-Sex Video-X Vie Privee	- W -	- Y -
	Wet and Horny White House White Undies Wildcot	Young and Lonely Young and Silky Young Men's Image Young Stuff Young Wet Pussies
	- X -	- Z -
	X-cert. X-rated	Zap

*National Accessibility Survey*

While 540 titles were listed across Canada, there is no indication that this number is available in any single location. The figure of 540 represents the minimum number available, since the National Accessibility Survey forms contained only 20 spaces in which to list the magazine titles sold at each outlet; because many outlets may have had more than 20 titles for sale, it is possible that a certain number of the more obscure publications were missed. There were 60 "variation titles", (e.g., Playgirl, Playgirl's Portfolio, Playgirl's Men of Europe, Playgirl's Best Cartoons and The Best of Playgirl).

Many of the more explicit or fetish-oriented magazine titles appear only for a single issue. "Volume One, Number Two" is never produced, but in its stead, the same publisher will introduce "Volume One, Number One" of a closely related magazine, one often having a very similar title. This practice is intended to protect the publisher from law enforcement activity. For example, if Customs prohibits the importation of magazine X, the publisher will not suffer a permanent loss, since there will never be a second issue of magazine X; magazine Y, will be introduced the following month, and since its title will not appear on the bi-monthly list put out by the Prohibited Importations Section, it may stand a better chance of clearing Customs than would its predecessor. Similarly, municipal or provincial police officers keeping a lookout for new issues of magazine X, for the purpose of possible obscenity charges, would be unable to find subsequent issues. Of course, the following month, Magazine Y will be discontinued, to be replaced by magazine Z. Since the National Accessibility Survey was conducted over a period of several months, it is certain that the 540 titles listed include many that have since disappeared, and have been succeeded by other titles shown on the list. If a single series of such titles is regarded as representing *de facto*, only a single publication, the total of 540 different magazines may in fact be considerably inflated.

It is evident from the listing given that the A.B.C. does not now report — nor ever has reported — circulations for the full range of pornographic magazines being marketed in Canada. While the number of "adult" titles listed by

A.B.C. has doubled, this growth is not a factor as such of the increase in the actual number of different pornographic magazines being retailed. The increase in the number of titles reported has not come close to keeping pace with the increase in the number of titles available. Further problems arise from the fact that many magazines whose circulations were reported by the A.B.C. at one time have since either ceased to publish or have discontinued using the A.B.C. to set their advertising rates. *Because of these limitations, the A.B.C. figures cannot be used as the basis of a precise calculation either of the total Canadian sales volume for all pornographic magazines, or of the growth in sales over the years.*

The information from the A.B.C. does not provide any indication of changes in the content of adult magazines from the past to the present. This type of information was obtained by examining magazines published in various years. Magazines of the 1950s featured photographs of female models with veiled or exposed breasts. By the 1960s, magazines were available which contained not only exposed breasts but also side profiles of nude men. In the 1970s, publications were introduced onto the market which featured photographs of full frontal and rear nudity of men and women, of the female genital area and (by the late 1970s) of male genitals.

The categories of information available through the A.B.C. were:

1. Price by single copy and subscription on a one, two and three year basis;
2. Total North American sales both by month, and as an average taken over a six month period;
3. Total subscription sales per province (available in most instances);
4. Total newsstand sales per province (available in most instances);
5. Canadian paid circulation by population groups;
6. Canadian paid circulation by county size.

## National Per Capita Adult Magazine Sales

The one month circulation figures reported by publishers to the A.B.C., listed for both six month periods of each year (January to June and July to December), were obtained for 1965-81. During this period, circulation figures were reported for 17 different adult magazine titles at different times, but never for more than 12 titles in any one year. In order to determine *per capita* sales figures, it was necessary first to obtain aggregate sales figures for each year. This was accomplished by adding together both semi-annual sales figures for each year. The annual aggregate sales for each listed magazine were thus obtained; for each year, these totals were then added together to yield the annual aggregate sales totals for all adult magazines reporting to the A.B.C. Reference was made to Statistics Canada information to obtain general population figures for each year, as well as figures for the total male population.

**Table 54.2**  
**Canadian Per Capita Sales of**  
**A.B.C. Audited Adult Magazines: 1965-81<sup>1</sup>**

Year	ABC Total Magazine Sales (million)	Total Population <sup>2</sup> (million)	Per Capita Sales	Total Male Population	Per Capita Sales
1965	3,603.8	19,644.0	0.18345	9,879.4	0.3647
1966	4,066.3	20,014.9	0.20316	10,054.3	0.4044
1967	N/R	20,378.0	U/K	10,232.2	U/K
1968	5,128.6	20,701.1	0.24775	10,387.8	0.4937
1969	5,059.7	21,001.0	0.24093	10,530.7	0.4805
1970	5,324.2	21,297.0	0.25000	10,669.1	0.4990
1971	6,255.7	21,568.3	0.29004	10,795.4	0.5794
1972	8,272.5	21,801.3	0.37945	10,900.8	0.7588
1973	11,133.1	22,042.8	0.50505	11,010.4	1.0111
1974	11,441.8	22,364.0	0.51166	11,159.0	1.0253
1975	12,722.2	22,697.1	0.56052	11,313.8	1.1245
1976	11,066.7	22,992.6	0.48132	11,449.5	0.9665
1977	13,525.6	23,272.8	0.58117	11,572.1	1.1688
1978	15,075.5	23,517.0	0.64104	11,670.8	1.2917
1979	15,172.8	23,747.3	0.63892	11,765.5	1.2896
1980	15,375.7	24,042.5	0.63952	11,887.1	1.2935
1981	13,539.9	24,341.7	0.55624	12,068.3	1.1219

*Audit Bureau of Circulation.*

<sup>1</sup> Statistics Canada figures were obtained to determine: total population; and total male population. Statistics Canada Population figures and Audit Bureau of Circulation figures are quoted in thousands and rounded to the nearest hundred.

<sup>2</sup> Canada. Statistics Canada. *Estimates of Population for Canada and the Provinces, June 1, 1983.* Ottawa, Supply and Services Canada, 1983, p. 13.

N/R = not reported

U/K = unknown

Between 1965 and 1981, there was a sharp increase in sales: the aggregate sales figure for the peak year, 1980, is 4.3 times that calculated for 1965. The fact that aggregate sales decreased between 1980 and 1981 does not necessarily indicate a diminution in or saturation of the market for pornography. The proliferation of new titles likely accounts for a significant increase in sales which would not appear in the A.B.C. records. Also, the emergence of new media (e.g., video-cassettes) to compete with magazines may account for part of the decline. On the basis of these figures alone, it is evident that the pornographic magazine trade has been a high growth industry.

*Per capita* sales figures also marked striking increases between 1965 and 1981. The overall *per capita* sales (i.e., for the total population of Canada) in 1980 were 3.5 times higher than in 1965. Among all Canadian males, the *per capita* sales also increased by a factor of 3.5 between 1965 and 1980. In interpreting these findings, it is necessary to reiterate the fact that these figures represent an extremely conservative estimate of Canadian consumption of magazine format pornography, since the sales of a sizeable number smaller



circulation publications were not included in the calculations. The total Canadian sales volume for all pornographic magazines is startlingly large: on average, one in two Canadians in 1980, was purchasing one copy of the leading pornographic magazines each year. The purchase of this matter has grown over the years at a rate far exceeding that at which the country's population has increased.

## Provincial Circulation

Based on one month sales totals for each six month reporting period, the annual provincial sales totals were obtained by adding together the sales totals for both single months reported in each year, and multiplying this sum by six. This procedure makes the assumption that the sales reported by each publisher for the selected individual months were reasonably representative of the sales volume for each title for the entire six month period, rather than being extensively higher or lower than the average. This assumption may not be justifiable, and may represent a source of error in the total annual provincial sales figures reported in Tables 54.3. The degree of error thus introduced is likely not sufficient to negate the validity of the findings concerning regional sales trends.

**Table 54.3**  
**Provincial Per Capita Sales of**  
**A.B.C. Audited Adult Magazines: 1966, 1973 and 1980**

Province	Per Capita Sales for Total Population of A.B.C. Audited Adult Magazines			Per Capita Sales for All Males of A.B.C. Audited Adult Magazines		
	1966	1973	1980	1966	1973	1980
Newfoundland	0.1135	0.2079	0.2334	0.2215	0.4084	0.4600
Prince Edward Island	0.1398	0.0947	0.3971	0.2740	0.1885	0.7904
Nova Scotia	0.1865	0.4553	0.5475	0.3675	0.9080	1.0996
New Brunswick	0.1274	0.3182	0.3792	0.2522	0.6333	0.7583
Quebec	0.1653	0.2269	0.3169	0.3306	0.4575	0.6415
Ontario	0.2353	0.6570	0.7682	0.4692	1.3139	1.5554
Manitoba	0.2061	0.5699	0.7284	0.4074	1.1416	1.4715
Saskatchewan	0.1614	0.4082	0.7638	0.3137	0.8056	1.5150
Alberta	0.2644	0.8553	1.0967	0.5144	1.6836	2.1649
British Columbia	0.3124	0.7653	0.9650	0.6183	1.5243	1.9404
Yukon	0.6600	0.8390	0.7477	1.1928	1.5495	1.4286
Northwest Territories	0.2360	0.2665	0.9628	0.4307	0.5072	1.8991
<b>TOTAL</b>	<b>0.2032</b>	<b>0.5051</b>	<b>0.6395</b>	<b>0.4044</b>	<b>1.0111</b>	<b>1.2935</b>

*Audit Bureau of Circulation.* Audited circulation statistics relative to: (1) total Canadian population by provincial distribution; and (2) all males by provincial distribution.

The findings in Table 54.3 indicate the existence of persistent regional differences in the *per capita* sales of the pornographic magazines reported to the A.B.C. The *per capita* sales in Eastern Canada have been markedly lower than in the West. Unfortunately, the A.B.C. does not provide information concerning the circulation of any French-language publication; thus, the patterns are likely to be somewhat distorted. To the extent this was the case, it would be expected that the *per capita* figures of all provinces with large francophone populations would be disproportionately low. In this regard, however, Manitoba, the Western province with the largest French-speaking population, recorded significantly higher *per capita* sales rates in each of 1966, 1973 and 1980 than did New Brunswick. This fact suggests that the gradient of sales from East-to-West is a real phenomenon, notwithstanding the non-inclusion of information concerning French-language magazine sales.

The gap between the highest and lowest provincial *per capita* sales widened between 1966 and 1980. The findings on provincial *per capita* sales confirm those given concerning the high level of growth across Canada in the recorded sale of pornographic magazines between the 1965 and 1980. In all jurisdictions except two (Quebec and the Yukon), the *per capita* sales of magazines reporting to the A.B.C. at least doubled, and in many instances, tripled, or even quadrupled. The lower rate of growth in *per capita* sales for Quebec may be a product of the non-inclusion of information concerning the circulation of French-language publications.

## Sales Value of Pornography

A.B.C. information sheets provide the *per* issue newsstand price for each magazine. These price figures may be misleading, however, because of differences between newsstand prices and subscription prices. Some of the magazines listed underwent price changes during either of the six month periods, but these variations have been taken into account in determining the sales value of each magazine title. The dollar value of each magazine was calculated by multiplying the number of magazines sold by the *per* issue price. For only 12 of the several hundred pornographic magazine titles being sold in Canada in 1980, the estimated sales value was \$41,389,264.36.

## National Accessibility Survey

In order to obtain information concerning the accessibility of pornography to children and youths, the Committee settled on the expedient of a survey in which volunteer participants across the country completed questionnaires concerning the display and accessibility of adult magazines in various retail outlets. One questionnaire was completed for each retail outlet visited. Because the Committee relied upon the voluntary assistance of a large number of volunteers, the survey was kept as brief and simple as possible. The questionnaire

**Table 54.4**  
**Sales Value of 12 A.B.C. Audited Adult Magazines: 1980**

Magazine	June 1980 (thousand)	Price (\$)	Total (\$)	December 1980 (thousand)	Price (\$)	Total (\$)
Cheri	254.9	2.50	637,250.00	270.2	2.75	743,050.00
Chic	195.1	2.95	575,545.00	136.9	2.95	403,855.00
Club	235.1	2.95	693,545.00	280.8	2.95	828,360.00
Gallery	340.9	2.25(4) 2.95(1) 2.50(1)	820,991.00	312.5	2.50	828,025.00
Genesis	135.9	3.00	407,700.00	141.6	3.00(3) 2.75(3)	407,100.00
Hustler	587.2	2.95	1,732,240.00	551.3	3.25(1) 2.95(5)	1,653,900.03
Oui	411.1	2.50	1,027,750.00	286.9	3.00(1) 2.50(5)	741,158.33
Penthouse Forum	374.7	1.75	655,725.00	303.8	1.75	531,650.00
Penthouse	3,111.3	2.75	8,556,075.00	2,870.1	2.75	7,892,775.00
Playboy	2,037.6	2.75	5,603,400.00	1,436.6	2.75	3,950,650.00
Playgirl	338.1	1.95	659,295.00	329.5	2.25	741,375.00
Swank	222.7	2.75	612,425.00	210.9	3.25	685,425.00
<b>TOTAL</b>	<b>8,244.6</b>		<b>21,981,941.00</b>	<b>7,131.1</b>		<b>19,407,323.36</b>

*Audit Bureau of Circulation.* June 1980 figures represent the average sales for six months January 1980 to June 1980; December 1980 figures represent the average sales for the six months July 1980 to December 1980. A number in brackets (following the price for that six month period) indicates the number of months that the magazine sold for that price. Total sales for 12 titles for 1980 is \$41,980,941.36.



consisted of one page of questions with an accompanying page of instructions and definitions. (The working definition of pornography used was previously noted).

The questions asked in the survey related to the nature of the store, the number of adult magazine titles being offered for sale, the mode of display for such magazines, the visibility and accessibility of such items to children and the presence or absence of signs prohibiting youths from buying or browsing through the adult magazines. The types of retail outlets targeted for the survey included confectionery, smoke, variety, drugstores, milk, department, airport, train station, hospital and general bookstores, but excluded so-called "adult" bookstores.

In order to assure the practicability of the survey, pilot studies were conducted prior to enlisting the participation of volunteers across the country. At this stage, a total of 117 stores was visited in most parts of Canada. The results indicated the feasibility of undertaking a national survey, and in this regard, the Committee contacted a number of organizations seeking volunteers willing to participate in the collection of information. The Committee warmly acknowledges the assistance afforded, primarily rendered by academic institutions in all parts of the country. A total of 1091 retail outlets in 23 towns and cities were surveyed in the National Accessibility Survey. In all but three communities, either all retail outlets, or a sample survey of these, was undertaken of those identified as selling newspapers, magazines or books.

## Policies of Periodical Distributors of Canada

The *Periodical Distributors of Canada* (P.D.C.) is an organization comprising 39 member companies across the country that employ an estimated 2,000 persons. The P.D.C. estimates that its members are responsible for the distribution in Canada of about 90 per cent of periodicals and paperback books of all types. The P.D.C. "can state with authority that not only do its members not distribute hardcore pornography, but that hardcore pornography from other sources is not generally available at the average neighbourhood newsstand, cigar, or variety store or other retail outlets throughout Canada".<sup>1</sup> A number of independent jobbers and wholesalers not belonging to the P.D.C. operate in various parts of the country and these do not necessarily adhere to P.D.C. policies and guidelines.

The P.D.C.'s official policies concerning adult periodicals are:<sup>2</sup>

... each Member Firm hereby acknowledges the social desirability of selective display of Adult Reading Matter in retail outlets. Each Member Firm undertakes to use its good offices to encourage retail outlets to at all times display adult reading matter with restraint in order to restrict exposure to children, as well as to adult members of the community who do not wish to avail themselves of such reading matter;

... not withstanding the fact that Member Firms have no authority to assume the responsibility of deciding what may properly be published or read by Canadians, each Member Firm hereby pledges itself to the interpretation of Canadian community standards by establishing categories of Adult Reading Matter, as for example:

One, Adult Reading Matter depicting non-violent human sexuality shall be classified as "Restricted" and recommended only for selective retail display.

Two, other Adult Reading Matter which from time to time exceeds the tolerance of contemporary community standards shall be classified as "Unacceptable" for distribution.

The P.D.C. states that member companies encourage retailers to employ restraint in displaying adult publications, to place such matter on upper racks, away from the floor or cash registers and not to sell to minors. The P.D.C. further notes that publishers of adult magazines are aware that certain types of covers will offend some persons, and for this reason, most of these publishers have ceased to produce magazines with nudity displayed on the covers.

Ontario-based members of the P.D.C. make use of an independent advisory body, the Ontario Advisory Council, in deciding whether individual issues of certain periodicals are, or appear to be, acceptable according to contemporary community standards (i.e., whether they are legally obscene).

## Location of Retail Outlets

Of the retail outlets surveyed, over half (53.9 per cent) were in commercial areas of towns and cities, two in five (43.0 per cent) were located in residential areas, and the remainder were either sites such as recreational centres or industrial areas. The types of outlets surveyed were:

Type of Store	Per Cent (n=1091)
Bookstore/newspaper	7.1
Restaurant/cafe	0.3
Department store	3.7
Drugstore	14.8
Gift/card shop	1.9
Neighbourhood grocery store	10.6
Newsstand	7.8
Supermarket	3.3
Tobacco store/smoke shop	5.6
Variety store	44.9

Of the 1091 retail outlets surveyed, 881 or 80.8 per cent sold at least one or more adult magazines or some form of pornographic matter. The remainder of the findings are given in relation to the outlets selling these materials. Before

these results are presented, it is pertinent to note the general etymological usage of the word, *accessibility*. As this word has come to be commonly used, it refers to that which is capable of being used or of being reached. In relation to the meaning typically attributed to the idea of *accessibility*, the findings given pertain to pornography which potentially could be used or reached by children and youths, but it does not mean that children may have actually seen or purchased pornography. Findings about the purchasing habits of Canadians were obtained in the National Population Survey; these are given following the presentation of the results of the National Accessibility Survey.

### Display of Pornography

Of the four in five retail outlets (80.8 per cent) selling some form of pornography in 23 towns and cities across Canada, about a third (35.5 per cent) displayed 20 or more items; some had hundreds of items. A majority of the outlets sold considerably fewer adult magazines, with these including: under five items (21.6 per cent); five to nine items (23.2 per cent); 10 to 14 items (11.9 per cent); and 15 to 19 items (7.8 per cent). Most of the various retail outlets surveyed carried some form of pornography, most commonly, glossy full-size adult magazines having the widest circulation across Canada.

Over half of these pornographic items were located further than 10 feet from the sales counter (52.8 per cent). In only about one in six outlets was the pornography located either at the sales counter or placed within it. In about one in three outlets (35.1 per cent), the materials were situated within 10 feet of the sales counter.

Most of the outlets carrying pornographic matter had full size glossy adult magazines (77.3 per cent) and one half (50.2 per cent) carried small booklet-type magazines (some outlets carried both types of pornography). In four in five outlets (80.2 per cent), these 'adult' magazines were either displayed separately from popular magazines, or with them, but grouped together.

Display of Adult Magazines	Per Cent
Separate from popular magazines	26.0
Included with popular magazines, but adult magazines grouped together	54.2
Interspersed with popular magazines	14.3
Other, not reported	5.5
TOTAL	100.0

One third of the adult magazines (32.8 per cent) were either placed on the flat bottom shelf or displayed within three feet of the floor. About half were located at an eye level of between four and five feet from the floor. Thus, about six in seven pornographic magazines (85.4 per cent) were readily accessible to most young adolescents and a sizeable proportion was well in reach of younger children.



Height from Floor	Per Cent
On ground or bottom shelf	15.3
2 – 3 feet from floor	17.5
4 – 5 feet from floor	52.6
TOTAL (5 feet or under)	85.4

The findings of the National Accessibility Survey indicate that the policy guidelines of the *Periodical Distributors of Canada*, for the most part, were either unknown to, or were being ignored by, the retail outlets surveyed from Newfoundland to British Columbia. In these outlets, comparatively little restraint was being observed in the display of adult magazines and other forms of pornography.

About nine in 10 retail outlets surveyed had no signs prohibiting children or youths from buying or browsing through adult magazines.

Signs Prohibiting Children and Youths From:	Yes	No	Not Reported
	Per Cent	Per Cent	Per Cent
Buying Adult Magazines	3.2	88.9	7.9
Browsing through Adult Magazines	5.6	86.0	8.4

Information was obtained in the survey about how the adult magazines on the front rows of display shelves were shown. The style of display may range from a magazine's cover being fully exposed, partially covered, having only the title showing, to being fully hidden. The findings of the National Accessibility Survey clearly indicate that a sizeable majority, about four in five, of the retail outlets either fully exposed or only partially covered the adult magazines on their display shelves. In only a small proportion of these retail outlets was it found that the titles of adult magazines were shown; it was rare for them to be fully covered. In about one in six outlets (16.9 per cent), some or all adult magazines were enclosed with a clear plastic cover or a paper binding.

Display Covers of Adult Magazines	Large Glossy Adult Magazines	Small Booklet-type Adult Magazines
	Per Cent	Per Cent
Fully exposed	45.5	63.1
Partially covered	33.2	19.2
Only titles shown	19.7	13.4
Fully covered	1.6	4.3

The findings of the National Accessibility Survey will not surprise Canadians living in most parts of the country. Their own experience will attest

to the findings' validity. A great majority of the retail outlets surveyed carried pornographic magazines, most openly displayed adult magazines and there were few apparent restrictions in relation to their accessibility by children and youths. As noted in the review of the circulation figures, the distribution and sale of pornography have become a large-scale enterprise in Canada, one almost exclusively of foreign origin but generating earnings for many thousands of Canadians.

The survey's findings also show that the well-intentioned policy guidelines of the *Periodical Distributors of Canada* have been ineffectual in instilling a sense of restraint or prudence by retailers in the display of adult magazines or pornography. **Pornographic matter is not just accessible, but readily accessible, to children and youths in all parts of Canada.** As documented in the findings of the nationally representative sample of the Canadian people, this practice stands in sharp contrast with the expressed wishes of most Canadians.

## National Population Survey

The design of the National Population Survey and how it was conducted are described in Chapter 6, *Occurrence in the Population*. Included in this statistically representative survey of the Canadian population were questions concerning: the purchase of pornography; the types of matter bought; when the first purchase had been made; opinions concerning the display of pornography in retail outlets; whether pornography had ever been shown to the person against his or her will; and if he or she had known anyone who had been harmed by exposure to pornography.

In the pretest of the survey, special attention was paid to whether the word 'pornography' was clearly understood. The working definition given preceding the questions asked which was similar to that used in the National Accessibility Survey was that pornography included 'sex magazines, books and video tapes or cassettes'. On the basis of previously conducted research surveys, it appeared that the meaning of the word was generally well understood by persons from whom information was sought; in the case of the present survey, this was also found to be true. In the pretest, only one individual questioned what pornography meant, and in the national survey, only four persons raised similar concerns. None had any doubt that the word referred to sex magazines or comparable matter. The findings from the National Population Survey complement those of the Audit Bureau of Circulation and the National Accessibility Survey. Information from each of the three sources clearly indicates that a sizeable number of Canadians have bought pornography.

### Age of First Purchase

About three in five males (59.4 per cent) and about one in three females (30.8 per cent) said that they had bought pornography at least once during their lives. Conversely, about one in three males (36.6 per cent) and two in three females (62.9 per cent) had never purchased any form of pornography. A small handful of respondents (5.1 per cent) did not answer this question.

Table 54.5

## Canadians Buying Pornography: Age of First Purchase

Age When First Bought Pornography	Males (n=1002)	Females (n=1006)	Total (n=2008)
	Per Cent	Per Cent	Per Cent
Under 7 years	—	—	—
7 – 11 years	0.5	—	0.3
12 – 13 years	1.9	0.3	1.1
14 – 15 years	7.7	1.5	4.6
16 – 17 years	14.4	4.9	9.6
18 – 20 years	21.2	8.7	15.0
21 and older	13.7	15.4	14.5
Never bought pornography	36.6	62.9	49.8
No reply	4.0	6.3	5.1
TOTAL	100.0	100.0	100.0

*National Population Survey.*

The purchase of pornography is not an issue which is usually openly discussed by Canadians. It is evident, however, that when persons are asked questions about these issues and given the assurance that their replies will be kept confidential, many are prepared to provide information. There is no previous baseline for findings of this kind for Canada.

In its review of the national circulation statistics of a small number of widely distributed adult magazines, the Committee was informed by knowledgeable periodical distributors that the audience for pornography was almost exclusively male in composition and that buyers were typically men between 21 and 49 years-old. This belief is also widely held in other quarters. The survey's findings indicate that these assumptions are not wholly tenable. Only three in five males stated that they had ever bought pornography, and in contrast with commonly held beliefs, so had one in three females.

A distinction may be drawn between the purchase of a product and its subsequent use. A product may be used by, or exposed to, persons other than or in addition to, the one who buys it. It is unknown how many of the females who stated that they had bought pornography had purchased it for their own use, or for the use of male or female persons other than themselves. However, the same line of thought is equally applicable to male purchasers of pornography. By the same token, the findings of the National Population Survey do not indicate what proportion of males or females who stated that they had never bought pornography, may have in fact read, viewed or used pornographic



materials purchased by someone else. These materials are now so widely distributed that this type of situation is not just a possibility but an occurrence whose proportions are as yet undocumented.

The findings in Table 54.5 indicate that about a third (34.9 per cent) of the males first bought pornography at the age of 18 or older, while a quarter (24.5 per cent) had made their initial purchase at an earlier age. Assuming that in most males, pubescence has ended by age 18, it appears that the initial purchase of pornography by males was a post-pubescent experience more often than not (it was a post-pubescent experience for the three in five (58.8 per cent) males surveyed who had ever bought pornography). The finding suggests that the purchasing of pornography is not necessarily a phenomenon associated with the normal process of sexual maturation in Canadian males (i.e., it is not explicable solely as a "phase" that males go through as part of their growing up). This conclusion is even more strongly applicable in the case of the female respondents. Only about one in 15 females (6.7 per cent) had purchased pornography when under 18 years of age, and of the females who had ever bought pornography, one in five (21.6 per cent) had made her first purchase when she had been under age 18.

While the findings show that a majority of persons who had ever purchased pornography had done so when they were age 18 or older, a substantial proportion of first purchasers had been children and youths.

Age of First Purchase	Males (n=595)	Females (n=310)
	Accumulative %	Accumulative %
Under 7 years	—	—
7 – 11 years	0.8	—
12 – 13 years	4.0	1.0
14 – 15 years	17.0	5.8
16 – 17 years	41.2	21.6
18 – 20 years	77.0	50.0
21 and older	100.0	100.0

Excluding persons who had never bought these materials, one in six males (17.0 per cent) and one in 17 females (5.8 per cent) had been under age 15 when they had made their first purchase of pornography. These proportions rose respectively to two in five males (41.2 per cent) and one in five females (21.6 per cent) who had made such purchases before they had reached age 18. For these persons, the purchase of pornography had started relatively early in life, and as shown in the findings of the National Accessibility Survey, there were relatively few restrictions governing the display of adult sex magazines in retail outlets across Canada.

## Types of Pornography Purchased

Magazines constituted by far the most popular medium of pornography from the standpoint of purchase. All of the males and seven in eight females (87.1 per cent) who had ever purchased pornography had bought adult magazines. These figures also suggest that a sizeable proportion of the persons surveyed who had bought pornography had purchased more than one form of it (generally magazines and one or more other types of these materials). Half of the males (50.4 per cent) and one in six females (15.8 per cent) stated that they had purchased pornographic magazines several times or often. Thus, there were proportionately more recurrent purchasers of pornographic magazines than of any other type of pornography.

A substantial proportion of the respondents buying these materials had purchased pornography in book form. About two and a half times as many of the men had purchased pornographic magazines as had bought adult books (the proportions were about the same for men and women who stated that they had purchased these materials several times or often).

While only a relatively small proportion of persons said that they had purchased pornographic video-tapes or cassettes, this finding should be viewed in light of the fact that when the survey was conducted the home video-tape media were still new to the Canadian marketplace, and that playback equipment was relatively expensive. Also, it is unknown how many illicit copies were made of rented or purchased pornographic video-tapes; such copies could increase the actual circulation of this form of pornography to a level far greater than that indicated by the findings in Table 54.6. Given these facts, it is remarkable that almost one male respondent in 10 (9.6 per cent) reporting having purchased a pornographic video-tape and that one in 15 (6.6 per cent) had made such a purchase several times or often. One in 10 females (9.7 per cent) who had ever purchased pornography had bought an adult tape or cassette.

The findings indicate that adult magazines were the most frequently purchased pornographic commodity, but that a sizeable demand also existed for other forms of pornography which were less likely to have been as openly displayed as adult magazines. The Committee did not obtain information about the means of distribution of these other items, such as adult pornographic books, which are seen to reach a large audience if the findings of the National Population Survey are projected to the buying habits of all Canadians.

## Views Concerning the Retail Display of Pornography

The findings in Tables 54.7 and 54.8 present a study in contrast between the way Canadians perceived the conditions under which pornography was sold, and the situation that they believed should exist. A majority of all respondents (62.3 per cent) stated that, typically, local stores displayed pornographic magazines in a non-segregated manner. About one in five (20.4 per

**Table 54.6**  
**Types of Pornographic Matter Purchased**

Type of Pornography Purchased	Males			Females		
	Proportion of All Males in the Sample (n = 1002)	Proportion of Males Who Have Bought Pornography (n = 595)	Purchased Pornography Several Times or Often*	Proportion of All Females in the Sample (n = 1006)	Proportion of Females Who Have Bought Pornography (n = 310)	Purchased Pornography Several Times or Often*
Non-Accumulative Percentages						
Magazines	59.4	100.0	50.4	26.8	87.1	15.8
Books	23.7	39.8	19.0	13.6	44.2	7.7
Video Tapes/ Cassettes	9.6	16.1	6.6	3.0	9.7	1.6
Other Types	5.3	8.9	4.0	2.4	8.1	1.7

*National Population Survey.*

\*Percentage of total sample



**Table 54.7**  
**Display of Pornography in Local Stores as**  
**Reported by Canadians**

Usual Display of Pornography in Local Stores	Males (n=1002)	Females (n=1006)	Total (n=2008)
	Per Cent	Per Cent	Per Cent
Mixed with other magazines	61.2	63.3	62.3
Displayed separately	21.2	19.8	20.4
Behind blinders or screens	3.5	4.3	3.9
Kept out of sight/under counter	3.1	4.4	3.7
None sold locally	6.5	6.5	6.6
No reply	4.5	1.7	3.1
<b>TOTAL</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

*National Population Survey.*

cent) believed that the standard retail practice was to maintain a segregated display of pornographic magazines, while 7.6 per cent said that such publications were sold in such a way as to restrict their visibility, either by means of placing them behind blinders, under counters or out of sight.

The findings of the National Accessibility Survey and the National Population Survey are remarkably comparable in relation to the display of adult sex magazines and other pornography in retail outlets.

Display of Pornography in Retail Outlets	National Accessibility Survey	National Population Survey
	Per Cent	Per Cent
Located with or mixed with other magazines	68.5	62.3
Displayed separately	26.0	20.4

In the former survey, it was found that the majority of pornography sold in retail outlets was located in the display of other types of magazines. In the latter survey, the views expressed by respondents indicate that pornography has come to be widely perceived as a visible fact of social existence in Canada. On the basis of the surveys' findings, there can be no doubt that it has.

The findings in Table 54.8 attest to the existence of considerable dissatisfaction with the perceived *status quo*. Of all respondents, over half (54.6 per

cent) either favoured restricted visibility of pornography in local stores, or opposed any sale of such material. Only about one in six (17.7 per cent) felt that a mixed display of magazines was acceptable, while about a quarter (24.8 per cent) preferred a segregated display of pornography.

**Table 54.8**  
**Opinions Concerning How Pornography Should be Displayed in Local Stores**

How Pornography should be Displayed	Males (n=1002)	Females (n=1006)	Total (n=2008)
	Per Cent	Per Cent	Per Cent
Mixed with other magazines	23.2	12.7	17.7
Displayed separately	31.2	19.1	24.8
Behind blinders or screens	10.7	7.7	9.1
Kept out of sight/under counter	12.1	20.8	16.7
None should be sold	20.6	36.1	28.8
No reply	2.2	3.6	2.9
TOTAL	100.0	100.0	100.0

*National Population Survey.*

While the perception of males and females concerning the display of pornography was remarkably similar, there was no such concurrence of opinion when they were asked how they felt pornography should be displayed in stores. Women were considerably less tolerant of the open display of pornographic materials than were men: two in three (64.6 per cent) females favoured visually restrictive modes of display (i.e., behind blinders or screens, kept out of sight or under the counter) or opposed the sale of pornography altogether, while only two in five (43.4 per cent) of the males' responses fell into these categories. A third (36.1 per cent) of the women felt that no pornography should be sold as compared to a fifth (20.6 per cent) of the men. While this discrepancy of opinion is wide, a substantial proportion of the respondents of both sexes stated that there should be no sale of pornography in local stores.

In the course of its work, the Committee identified an apparent contradiction between the behaviour and views of Canadians concerning pornography. While most Canadians tended to denounce current practices involving the display of pornography, they nonetheless purchased it extensively. On the issue of how pornography should be shown in retail outlets, the findings of the National Population Survey indicated that about two in five tolerated the open display of pornography, and respectively, one in four either wished to have its visibility restricted or for none to be sold. There was far greater agreement, however, concerning the age at which persons should be permitted to purchase pornography.

# Age Limit on the Purchase of Pornography

The persons contacted in the National Population Survey were asked at what age they believed a person should be permitted to purchase pornography. About half (49.0 per cent) felt either that there should be no sale of pornography or that such material should be sold only to persons aged 21 or older. Five in six persons (83.3 per cent) were opposed to permitting the sale of pornography to persons under the age of 18. Unconditional freedom of purchase was favoured by a relatively small proportion of the persons surveyed — only 2.5 per cent.

**Table 54.9**  
**Opinions on the Ages at which Persons should be Permitted to Buy Pornography**

Age at which a Person should be Permitted to Buy Pornography	Males (n= 1002)	Females (n= 1006)	Total (n= 2008)
	Per Cent	Per Cent	Per Cent
21 and older	20.1	28.1	24.3
18 and older	41.0	28.3	34.3
16 and older	13.1	7.1	9.9
14 and older	1.3	0.7	1.0
12 and older	0.3	0.2	0.2
Persons of all ages	4.5	1.8	3.1
None should be sold	17.9	30.7	24.7
No reply	1.8	3.1	2.5
TOTAL	100.0	100.0	100.0

*National Population Survey.*

A more restrictive approach towards the selling of pornographic materials was advocated by a larger proportion of the females than of the males: 58.8 per cent of the females stated that pornography should be sold only to persons over the age of 21 or should not be sold at all, while 38.0 per cent of the males' responses fell into these two categories. On the other hand, a larger proportion of the males (41.0 per cent) than that of the females (28.3 per cent) considered 18 an appropriate age for persons to assume the right to purchase pornography.

In the National Population Survey, it was found that a large majority (77.3 per cent) of the respondents who did not oppose the sale of pornography altogether felt that only post-adolescent purchasing (i.e., over age 18) should be permitted. Among the male respondents, three in four (74.4 per cent) of those not opposed to the selling of pornography favoured a post-adolescent age limit, while four in five (81.4 per cent) of the comparable group of females



advocated such a limit. This discrepancy, while not large, may reflect the fact that a larger proportion of males than females had made initial purchases of pornography below the age of 18. What is more remarkable than this modest difference is the high level of agreement about the need to protect children and youths from exposure to pornography. This finding is clear and unequivocal.

## Summary

The findings of the three surveys present a complementary description of the pornography trade in Canada. Between 1965 and 1980, the sales of the pornographic magazines reported to the Audit Bureau of Circulation increased by 326.7 per cent. By comparison, the population of Canada grew by 22.4 per cent. The growth in adult magazine sales was at least 14.6 times the growth of the population (there can be no doubt that the rate of growth was far greater than that, considering the increase in the number of magazine titles being offered for sale).

Clear and persistent regional differences occur in the distribution and sales volume of pornographic magazines. These disparities not only persisted, but actually became more marked between 1966 and 1980. This finding may reflect any of a number of social, economic or legal phenomena, including:

1. Differences between the public attitudes prevailing in different parts of the country towards pornography.
2. Variation from region to region in the cost of living and in the size of the average person's disposable income (i.e., in different regions, fewer or greater numbers of persons may have the funds to purchase pornographic magazines).
3. Different practices on the part of distributors and retailers (particularly in response to public pressure groups).
4. Differences in enforcement practice from region to region.
5. Differences in the habits of readers (e.g., in the number of persons between whom a certain copy of a magazine will be passed before being discarded).

It is unknown which of these factors may account for the regional sales patterns that emerge from the circulation statistics. However, the ascending east-to-west sales volume gradient corresponds roughly to the pattern of R.C.M.P. and Customs seizures of pornography (see Chapter 51). This correspondence indicates that the actual consumer demand for pornography appears to be greater in the West than in the Maritime provinces.

**One hitherto known but undocumented fact that received clear and ample verification from the Committee's examination of the statistics of the Audit Bureau of Circulation, is that the sale of pornography is big business in Canada. The commercial value of only 12 major titles was over \$41 million in 1980. If the sales of all other available titles only equals or slightly exceeds**

those of the 12 listed publications — a plausible supposition — then the retail value of pornographic magazines likely generates a gross revenue of at least \$100 million *per annum*. This \$100 million figure excludes the sale of pornographic pocket books, films, videotapes, “sex aids”, and the admission fees charged for commercially exhibited motion pictures.

The main findings of the National Accessibility Survey were the documentation of several hundred pornographic magazines being sold in retail outlets across Canada and that most of this matter was openly displayed. Much of this material was readily accessible to children and youths in relation to magazine covers being readily visible, being placed with other magazines and in terms of height from the floor. The findings indicate that the policy guidelines of the Periodical Distributors of Canada concerning the display of adult reading matter were not being observed by a majority of retail outlets carrying these materials. In the National Population survey, three in five males and about one in three females stated that they had bought pornography at least once. Of persons having bought pornography, two in five males and one in five females had initially purchased these materials before age 18.

On the issue of the display of pornography in retail outlets, there was considerable agreement that an age limit be established in relation to when persons might purchase pornography. Over three in four persons (77.3 per cent) who did not oppose the sale of pornography altogether felt that only persons age 18 and older should be permitted to purchase this matter.

## References

### Chapter 54: Circulation, Accessibility and Purchase

- <sup>1</sup>. Periodical Distributors of Canada *Statement of Policy "Respecting Adult Reading Matter"*. June, 1976; and "Adult Reading Matter: Censorship vs. Freedom of Choice", March, 1980.
- <sup>2</sup>. *Ibid.*





## Chapter 55

### Associated Harms

Much public and scientific controversy surrounds the question of what effects, if any, pornography has on individuals and on society. A wide range of moral, behavioural, attitudinal and emotional effects have been attributed to exposure to pornographic materials. Many producers of pornography proclaim their product to be an educational tool and a liberating force for sweeping away the repressive and joyless puritanical attitudes of the past. This view is sharply contested by many parents who are deeply concerned by the possibility that their children may obtain misleading or distorted information about love, sex and relations between men and women through contact with sexually explicit matter. Pornography has been condemned on the grounds that it fosters misogyny and socially repressive attitudes, lowers self-esteem and self-awareness, and acts as a catalyst in promoting violence. Researchers, often drawing upon incomplete or seriously flawed sources of information, are divided about whether exposure to pornography is associated with increased aggressiveness and a rise in the incidence of sexual offences.

**In undertaking its review of the research literature on sexual offences available for Canada, the Committee found no empirical studies whose findings had been directly grounded upon the experience of a sizeable number of individuals. None of these studies dealt directly with the potential harmful effects of exposure of pornography to children. The studies completed included: non-empirically grounded assessments; a limited number of personal accounts; statistical reports surveying trends in crime and the distribution of pornography; the results of social psychological experiments, typically involving college students, involving the simulation of exposure to these materials; and briefs or reports drawing heavily, but selectively, upon studies undertaken in other nations.**

In seeking to assess the extent to which children and youths were known to have been exposed to pornography and whether they had been affected or harmed by such exposure, the Committee considered the findings of two major national inquiries undertaken in the United Kingdom and the United States and included questions on these issues in the national surveys which were conducted. In particular, the National Population Survey was used as a means of seeking to obtain information from a representative sample of Canadians about

their experience as children with pornography and their identification of the consequences resulting from exposure to these materials. These findings are given in this chapter.

## American and British National Inquiries

A substantial body of research pertaining to the effects of exposure to pornography was reviewed in two national inquiries appointed respectively in the United States and the United Kingdom. The *United States Commission on Obscenity and Pornography* which reported in 1970 undertook a comprehensive review of available research and commissioned studies dealing with these issues.<sup>1</sup> The *British Committee on Obscenity and Film Censorship*, which reported in 1979, provided an updated review of research completed between the publication of the American report and the submission of its own appraisal.<sup>2</sup>

The reports of these two major national inquiries were in agreement on several issues. These points were: the varying and vague definitions of pornography; the inconclusiveness of the limited number of studies having empirical findings in documenting whether there is a causal link between exposure to pornography and persons being harmed by such exposure; and the absence of studies documenting the experience of children who were exposed to these materials.

In relation to harms associated with exposure to pornography, the main conclusion of the *U.S. Commission* was:

“In sum, the empirical research has found no evidence to date that exposure to explicit sexual materials plays a significant role in the causation of delinquent or criminal behaviour among youths or adults. The Commission cannot conclude that exposure to erotic materials is a factor in the causation of sex crime or sex delinquence.”<sup>3</sup>

Based on its review of the research drawn upon by the *U.S. Commission*, critiques of that report and subsequently completed studies, the 1979 *British Committee* reiterated the conclusions of the earlier inquiry.

“... we make the comment that the effect of re-examining the original studies in light of a hostile critique of the Commission’s conclusions ... is simply to make one adopt rather more caution in drawing inferences from the studies undertaken. It is still possible to say ... that there does not appear to be any strong evidence that exposure to sexually explicit material triggers off anti-social behaviour. We would add only that this is consistent with what we learned from the clinical experience of those experienced medical witnesses we consulted.”<sup>4</sup>

In reaching these conclusions, both national inquiries shredded most of the existing research on pornography. Much of the available research was based on the experience of small and atypical groups such as prison inmates or college



students. None of the research reviewed by these inquiries provided an assessment of the long-term effects of exposure to pornography. Social psychological experiments in which small groups were exposed to sexually explicit material and the reactions of the subjects noted were dismissed "as an unilluminating and unreliable way of investigating complex behaviour"<sup>5</sup>. In this regard, the 1979 *British Committee* concluded:

"Since criminal and anti-social behaviour cannot itself, for both practical and ethical reasons, be experimentally produced or controlled, the observations must be made on some surrogate or related behaviour . . . The fundamental issue in this field concerns *the relations that hold between reactions aroused in a subject by a represented, artificial, or fantasy scene, and his behaviour in reality* . . . We can only express surprise at the confidence that some investigators have shown in supposing that they can investigate *this* problem through experimental set-ups in which reality is necessarily replaced by fantasy."<sup>6</sup>

Both national inquiries cited the absence of clinical studies documenting the harms of exposure to pornography. Each report also considered, and set aside as spurious, those studies in which the distribution of pornography was correlated with changes in the incidence of reported rates of criminal activity. Such studies were dismissed on the grounds that there was no direct empirical documentation of harms to persons at the individual level, and that no consideration was given in these types of reports as to why a minority of persons exposed to pornography either should be harmed or become sexually deviant when the majority having this experience was apparently immune to these effects.

Notably, the two national inquiries failed to identify research dealing with the effects of exposure of pornography to children. In a minority report appended to the 1970 *U.S. Commission*, it was noted that:

"While the Commission in their Final Report state ' . . . [there] is no evidence that exposure to or use of explicit sexual materials play a significant role in the causation of social or individual harms such as crimes, delinquency, sexual or non-sexual deviancy, or severe emotional disturbance . . . or plays a significant role in the causation of delinquent or criminal behaviour among *youth or adults*', they do not mention that there was *not a single* experimental study, longitudinal study, or clinical case study involving youth."<sup>7</sup>

The 1979 *British Committee* concluded that while the effects of pornography were widely seen as being dangerous to children:

" . . . for obvious reasons children have not been used in experimental work on exposure to pornography, and we heard no evidence of actual harm caused to children . . . <sup>8</sup> [in discussions with clinicians] . . . we were struck by the fact that none of them was able to tell us of a case of which they had experience in which there was evidence of a causal link between pornography and a violent sexual crime."<sup>9</sup>

On the basis of its review of the reports of the American and British national inquiries and available Canadian studies, the Committee concluded

that, due to the absence of adequate empirical research on the effects of pornography on children, there was insufficient evidence provided by previous studies to show that children were or were not harmed by exposure to sexually explicit materials.

## Unwanted Exposure to Pornography

In undertaking its research, the Committee adopted a grounded approach in which information was sought directly from Canadians about their experience of having been exposed to pornography as children and whether they or someone whom they knew had been harmed. The persons contacted in the survey were also asked if they had ever been exposed to pornography against their will and how old they were if this had happened to them.

The findings obtained by the Committee indicate that Canadians identified several types of harms associated with exposure to pornography. These harms were:

1. The corruption of moral and social values.
2. The altering of personal values and behaviours.
3. Associated sexual assaults and attendant physical injuries sustained.

**Table 55.1**  
**Unwanted Exposure to Pornography by Age**

Age at Which Unwanted Exposure to Pornography Occurred	Sex of Person Shown Pornography			
	Males		Females	
	Number	Per Cent	Number	Per Cent
Under age 7	2	3.0	4	7.3
7 — 11 years	4	6.1	5	9.1
12 — 13 years	11	16.9	11	20.0
14 — 15 years	12	18.5	8	14.5
16 — 17 years	9	13.9	6	10.9
18 — 20 years	12	18.5	11	20.0
21 years and older	9	13.9	5	9.1
Not Reported	6	9.2	5	9.1
TOTAL	65	100.0	55	100.0

*National Population Survey.* Total denominator = 1002 males, 1006 females.

In presenting these findings, the Committee recognizes that there are serious limitations inherent in the sources of information drawn upon. The information obtained was based on recollections of events occurring in the past, different ideas of what constituted pornography were likely involved, the reports given about the experience of persons known to the informants may have been inaccurate, and the number of persons citing such incidents was small. However, in light of the other types of privileged information provided to the Committee for which extensive replies were given, there is no reason to believe that a sizeable number of persons would have chosen to withhold information about their unwanted experiences as children with pornography. As well, the graphic accounts given, when taken in conjunction with cases investigated by the police, leave no doubt that incidents of unwanted exposure to children of pornography occur, and that in some of these situations, such exposures are associated with children having been sexually assaulted.

**One in 17 persons (6.0 per cent) in the National Population Survey said that he or she had been exposed at least once to pornography against his or her will; one in 15 (6.8 per cent) said that he or she knew someone who had been harmed by such exposure.**

The findings in Table 55.1 list the ages when the first unwanted exposure to pornography occurred. Acts of this kind had happened about a fifth more often to males than to females. When the first unwanted exposure to pornography had occurred, one in 11 males (9.2 per cent) and one in six females (16.4 per cent) had been 11 years-old or younger. About half (47.5 per cent) having an experience of this kind had been under age 16.

## Impact on Social Values

Approximately two in three persons contacted in the National Population Survey added written comments in addition to replying to the questions asked. In relation to the issue of pornography, the majority of their written comments focussed upon the impact of pornography in affecting the moral and social values of Canadian society. The following statements are representative of the views expressed.

- *30 year-old farmer.* "Pornography affects the moral fibre of our society. Sex and its abuses bombard us too much. The moral values of young people are compromised".
- *50 year-old utility foreman.* "Some of my fellow workers are pre-occupied with pornography. It really affects their attitudes towards women. This material does not display reality — models are used to portray fantasy".
- *24 year-old computer analyst.* "Pornography has made some of my close friends have a lack of a sense of what's right or wrong. It's an invitation to crime — it is contrary to a sane mind".
- *35 year-old school board member.* "People are led to believe that abusive, exploitive sex is normal and enjoyed by all".



- *40 year-old foster mother.* "Pornography definitely causes rape and molestation to children. Men are excited. As a woman, I feel degraded by some of their remarks".
- *29 year-old union organizer.* "Pornography degrades women and children — it makes them sex 'objects'. It makes men have no respect for sex — they expect to behave like the pictures they see in the magazines".

None of the replies focussing on the negative effects of pornography in this category identified persons known to the respondents who had specifically been harmed by exposure to pornography.

## Impact on Personal Values

In addition to general opinions given concerning pornography, two categories of harms to persons were identified by respondents in the National Population Survey. In the first category, persons cited instances either of individuals who were family members, friends or close associates whom they reported had been negatively influenced by exposure to these materials, or they gave personal accounts of how they themselves had been affected in this regard. In the second category, accounts were given in which persons reported that they had been exposed to pornography and that they had subsequently been sexually assaulted by the same person.

In the former category, of the one in 15 persons (6.8 per cent) who said that he or she knew someone who had been harmed by exposure to pornography, about half (47.1 per cent) cited the experience of a family member, friend or close colleague and about an equal proportion (52.9 per cent) gave personal accounts. The most frequently cited harm recounted by persons which had involved family members or friends was the alteration of their values about sexual behaviour.

- *34 year-old public health worker.* "Pornography contains pro-violence, anti-female messages. It changed my ex-husband's attitude towards me. I became more of a thing than a person to him".
- *23 year-old ferrier.* "Pornography encourages sexual promiscuity and deviation. It encourages a pre-occupation with sex. It stimulated my father to lust for other women and to commit adultery. He lost his wife and lost the respect of his family. Now, he is an empty man with nothing of real worth in his life".
- *41 year-old graduate student.* "You should be mature enough to be able to deal with it. My ex-husband wasn't — he became pre-occupied with it".
- *32 year-old salesman.* "I had no adverse effects from buying pornography at 16. My wife was shocked — she had not been exposed to these books before".
- *48 year-old mother.* "Pornography gives young people a false image of sex between grown-ups, especially between parents. It makes no mention of the emotional involvement necessary to make sex meaningful. Seeing

pornography damaged my teenage son (13) — it changed his attitude to girls at a time when he was very vulnerable to peer pressure”.

- *32 year-old sales clerk*. “Pornography is an obstacle to having sincere and spontaneous sex. It replaces passion with desire. My husband wants me to practice the sexual acts inspired by seeing pornography”.
- *36 year-old mother*. “There are enough crazy people in the world without adding pornography to show children how they are going to grow up. It hurt my son — he doesn’t understand sex and thinks what he sees in magazines is normal”.
- *34 year-old secretary*. “Pornography leads to over-stimulation, abuse and desensitization. It has made my husband have unreal expectations of me”.
- *23 year-old clerk*. “Pornography encourages violence towards women. It made my nephew have a loss of respect for the female sex”.

Slightly over half of the persons who said they knew someone who had been harmed gave personal accounts of how their views about sexual behaviour had changed following exposure to pornography. Most of these persons felt that pornography had warped their views about sex, had altered their relations with others, and in some instances, had changed their way of life.

- *21 year-old student* shown pornography at age 13. “My innocence was lost and now I periodically have thoughts I’m ashamed of. It’s changed my personality”.
- *52 year-old utility engineer* shown pornography at age 17. “Myself. Some warping of thoughts always. Pornography is supposed to somehow make it ‘all right’.”
- *32 year-old controller*. “Seeing pornography made me get involved in sexual relationships without realizing their consequences”.
- *20 year-old camp counsellor*. “I found a number of pornography magazines. I was confused and became terrified of close contact with men. These books ruin the respect of the human body”.
- *31 year-old minister* shown pornography at age 11. “Me. Exposure tends to give me very violent and perverted thoughts”.
- *38 year-old teacher*. “Pornography gave me an improper view of sex relationships — it affected my personal moral standards”.
- *37 year-old economist*. “I was not seriously affected by pornography, but it certainly did harm my attitude to women”.
- *27 year-old sawmill worker* shown pornography at age 15. “I was hurt. It causes lusts and perverted thoughts which to me is the same thing as doing them”.
- *32 year-old nursing assistant*. “Having seen pornography as a child, it permitted me to continue in an area of my life which was seriously out of perspective”.
- *49 year-old nurse* shown pornography at age 11. “It left me with the wrong impression of sex. I consider it to be against decency”.

- *21 year-old student.* "Younger people should be kept from pornography so that their sexual perceptions develop in a healthy way. Seeing it distorted my own sexual attitudes and expectations".

The findings given in Chapter 54, *Circulation, Accessibility and Purchase* indicate that slightly less than half (45.1 per cent) of the persons contacted in the National Population Survey reported that they had purchased pornography on at least one occasion. While the purchase of pornography is not synonymous with a person having been exposed to this material, the survey's findings suggest that a substantial number of Canadians at one time or another have been exposed to pornography at least once during their lives. In contrast, one in 15 persons (6.8 per cent) reported knowing someone who in his or her judgment had been harmed; slightly over half of this group (3.6 per cent of all persons in the survey) gave personal accounts in this regard of their own experiences.

The survey's findings shed little light on why some persons but not others may have been harmed by exposure to pornography. In relation to the potential harms of exposure, the findings do not provide a basis upon which to establish the age at which special protection for children may be warranted. In light of the information available, the grounds for reaching this decision must be based on other considerations.

## Unwanted Exposure and Associated Assaults

**In addition to the reported impact of pornography on the values of Canadian society and the personal values of individuals, a number of respondents in the National Population Survey stated that they had been shown pornography and that they had also been sexually assaulted by the same person. One in 63 persons (1.6 per cent) in the National Population Survey reported incidents of this kind. Proportionately more of these incidents had involved victims who were females (1.9 per cent) than males (1.4 per cent).**

The findings given in Table 55.2 show that half of the males (50.0 per cent) and about three in five females (57.9 per cent) who had reported that they had been shown pornography and that they had been sexually assaulted by the same person were under age 16 when the incidents had occurred; only one in four persons having had this experience (24.2 per cent) had been an adult.

In incidents of this kind, about two in five persons (39.4 per cent) had had the sexual parts of their bodies touched. Proportionately, four times as many males (42.9 per cent) as females (10.5 per cent) had experienced oral-genital contacts. Some form of completed or attempted vaginal penetration had been committed against about half of the females, including: attempted vaginal penetration with a penis (21.1 per cent); vaginal penetration with a penis (against two females); and penetration with finger or object (21.1 per cent).



Table 55.2

Reported Incidents of Unwanted Exposure to  
Pornography Followed by Sexual Assault

Age at Which Reported Unwanted Exposure to Pornography Followed by Sexual Assault Occurred	Sex of Person Shown Pornography and Who Was Sexually Assaulted			
	Males		Females	
	Number	Per Cent	Number	Per Cent
Under age 7	1	7.1	2	10.5
7 – 11 years	—	—	3	15.8
12 – 13 years	2	14.3	5	26.3
14 – 15 years	4	28.6	1	5.3
16 – 17 years	1	7.1	1	5.3
18 – 20 years	3	21.4	2	10.5
21 years and older	3	21.4	5	26.3
TOTAL	14	99.9*	19	100.0

National Population Survey.

\*rounding error

Only two persons reporting these incidents had been victims of acts of anal penetration with a penis. Both were males. However, proportionately more males (28.6 per cent) than females (5.3 per cent) had been masturbated.

Since there is limited documentation in the research literature about incidents of this kind, the following personal accounts given by persons in the National Population Survey and the reports of a number of cases investigated by the police documented in the National Police Force Survey serve to illustrate the types of situations in which children and youths were shown pornography and had been sexually assaulted by the same person. In presenting these accounts, it is noted that the proportion reporting such incidents is small and that, in each instance, the exposure to pornography was forced upon the person involved.

- *23 year-old ice arena attendant.* When she was 12, a 17 year-old watchman exposed to her, showed her pornography, fondled her sexually and attempted to rape her. “I did not tell anyone, but I wasn’t ready for it. Children are exposed to pornography too early. Sex is not properly explained at home or in school. Boys are encouraged to be aggressive physically and sexually from a very early age”.
- *19 year-old student.* Shown pornography at age 10, threatened and experienced an attempted rape by her 68 year-old grandfather. In urging the prohibition of pornography, she wrote: “I feel this way because there

is enough bad things going on in the world today without pornography adding to it — it gives people ideas and this is why crimes happen”.

- *34 year-old secretary*. Shown pornography at age seven, threatened and was a victim of both cunnilingus and rape by her 17 year-old brother. “I still suffer from the humiliation of all that happening to me. My self-esteem suffered for years. I am now 34 and am still not over the guilt and trauma”.
- *45 year-old hotel clerk*. Between ages 12 and 16, her father exposed himself to her, showed her pornography, sexually fondled her and attempted to rape her. When she was married, she told her husband. “I feel my father could have been helped”.
- *26 year-old mother of three children*. This woman reported that when she was 13, her 33 year-old brother-in-law exposed to her, showed her pornography, threatened to have sex with her and fondled her crotch several times. “I lived with my sister and her husband. When she went to bed, if he was drinking, my brother-in-law wanted me to take my clothes off. He had a top management position for a large company. At the time, I didn’t know he had done the same thing to another sister. I didn’t want to hurt my sister who was married to him”.
- *46 year-old educator*. Shown pornography at age four, sexually fondled and masturbated. “It was presented as fun, a game, by a babysitter when I was four. It degenerates a whole population which becomes lax in their way of doing things in everyday life. It had a long indirect affect on me”. He told his mother and “the sitter was not recalled”.
- *25 year-old waitress*. Shown pornography at age eight by her father who also inserted a finger in her vagina. “I became lost and this was no good for me. It corrupts people’s minds — they become perverted”.
- *23 year-old truck driver*. Shown pornography at age 15 and had his penis fondled. “It makes the children learn bad things before the good things. It shows a lack of respect for others”.
- *50 year-old artist*. Shown pornography at age 12 and was masturbated by a neighbour. “It causes weak-minded people to rape. Some adults become aroused by looking at this. I ran away when it happened”.
- *19 year-old attendant*. Shown pornography at age 15, had a finger inserted in her vagina and experienced an attempted rape by school acquaintances. “They wanted me to be or do what they saw in the tapes or magazines. I was not ready for it. I did not tell anyone”.
- *41 year-old housewife*. Shown pornography at age six, threatened and raped by her uncle. “Children see pictures, they don’t forget and some adults have warped minds when it comes to pornography . . . I was frightened of males. It took years to heal the scars. Happy now”.
- *26 year-old lawyer*. Shown pornography at age 12 and was masturbated. “Pornography furthers illicit and illegal sexual activity — I was offended and embarrassed”.
- *18 year-old student*. Shown pornography at age 11 and sexually fondled. “The younger generation is becoming more involved in sexual experiences shown in movies and pornography. There is a sexual look in some men’s eyes. I’m always on my guard and uneasy”.

- *26 year-old mother.* “I do not like to admit that my father enjoyed pornography. He made my sister and me when I was five look at obscene pictures. Until I was 12, he abused us both [oral-genital and oral-anal contacts]. I could not speak of this until much later. My husband is the only person who knows”.
- *Six year-old girl.* A parks grounds-keeper approached a six year-old girl and asked her to “shake his pee-pee to get all of the milk out of it”. He showed her nude photographs and then masturbated in front of the child.

When apprehended, he was found by the police to have previously been committed for abnormal sexual behaviour to a provincial mental hospital. He explained he performed these acts “because of pressure building up over a period of time”. No charges were laid.

- *Five year-old girl.* Over a period of time until detected by the child’s parents, their five year-old daughter had her 15 year-old uncle as her babysitter during her parent’s absence. He would read a pornographic magazine and then fondle the child’s vagina and anus. No charges were laid due to lack of corroboration.
- *14 year-old girl.* Following the separation of this 14 year-old girl’s parents, she visited her father during the summer vacation. On her first night at her father’s home, he entered her bedroom and gave her a pornographic magazine to read. The next morning, he returned to his daughter’s bedroom and “asked her how she had liked the book”. He lay down beside her, and while fondling her breasts “remarked that it was better that a father and a daughter had sex”. He had intercourse with his daughter three times during her stay with him.

Although the girl was initially too ashamed to tell her mother, she subsequently confided to an adult who informed the local child protection agency which in turn contacted the police.

- *12 year-old boy.* A 12 year-old boy discovered and read several pornographic magazines in his older brother’s bedroom. A few days later, while baby-sitting a neighbour’s five year-old son, he started a game of “dickie” with the child. According to the child’s account given to the police, the older boy “put his dickie in my mouth and I was to suck it and then I was to put my dickie in his mouth and he was to suck on it”.

No charges were laid. Psychological assessment and counselling were recommended for the 12 year-old boy.

- *Six year-old girl.* A man sitting in a car in an alley called a six year-old girl to join him. He showed her a picture of a nude woman in a pornographic magazine, pulled down his trousers and exposed himself. He then asked the girl to touch his penis, which she did, but when he asked her to suck it, she refused. The unidentified offender then drove away.
- *Six and eight year-old boys.* Two brothers, ages six and eight, were playing in a ravine when they were approached by three boys, two of whom were age 10. The older boys showed the younger children pictures in a pornographic magazine and then asked the brothers to fellate them. The older brother refused but the six year-old sucked the penises of both of the 10 year-old boys.



When the boys' mother learned what had happened, she notified the police. The 10 year-old boys were cautioned by the police.

- *Six year-old girl.* A six year-old girl was invited by a 35 year-old man into his apartment where she saw "some barenaked books" which he had left open on the floor near his bed. After playing some disco music, the man told the child to remove her clothing. He fondled the girl's genitals and then had her masturbate him. He threatened her that she should not tell anyone.

The police, contacted by the girl's mother, seized a number of pornographic magazines. The accused was charged with indecent assault.

- *Six year-old girl.* While she was playing in a park, a six year-old girl was approached by a man in his mid 20s who gave her three pictures depicting lesbian sexual acts. He asked if she wanted to play with his monkey, and when she refused, he grabbed her. After trying to undress her, he ran away.

Ten days later when she was in her bedroom at night, the girl heard noises and saw the same man looking through the window. He asked her to come out to play. She called her mother who with a male companion immediately searched the grounds. The man was seen leaving. Suspect unknown.

- *11 month-old boy.* A family friend, a 15 year-old boy, was asked to babysit an 11 month-old infant boy. When the parents left, the babysitter took a combination of gravol pills and whiskey in hopes of becoming 'high'. He reported later to the police that previously he had read several hard-core pornographic magazines which portrayed sadomasochistic heterosexual acts. While reading, he heard the baby crying upstairs.

The baby wasn't hungry and the babysitter decided to give him a bath. The account given the police describes what happened.

"I took him into the bathroom and took the diaper off to give him a bath. Before this, I was reading a dirty book. I was feeling horny and I was giving [the infant] a bath and tried to screw him".

The anal intercourse on the infant resulted in tearing of the sphincter muscle leaving the ruptured tissue protruding from the anus. When the offence was discovered, the youth was placed in a boys' detention centre, pending a juvenile court decision and the commencement of psychiatric treatment.

## Summary

On the basis of the findings of the National Population Survey, it is evident that the occurrence of unwanted exposure to pornography may have been experienced by a sizeable number of Canadians, many of whom were children and youths when the incidents took place. In many of these incidents, the persons committing these acts were well known to children or were responsible for

their welfare. One in 63 persons (1.6 per cent of persons in the National Population Survey) reported having been exposed to pornography and also having been sexually assaulted at the time or following the exposure.

As noted previously, these findings are based on recollections of incidents occurring in the past, the definitions of pornography may have varied and the experiences of only a small number of persons are provided. However, in the case of the National Population Survey, the information obtained was derived from a representative sample of the Canadian population. In the Committee's judgment, the incidents reported likely constitute an under-estimate of the occurrence of situations involving exposure to pornography followed by a sexual assault.

**The findings of the two national surveys — population and police — indicate that for a number of persons, pornography had served as a stimulus to committing sexual assaults against children. The findings do not elucidate, however, why exposure to pornography may affect some persons, but not others, in this way nor do they indicate the nature of the circumstances in which incidents of this kind are more likely to occur.**

While incomplete with respect to many significant aspects of these issues, the findings of the National Population Survey identify some of the dimensions of the harms associated with exposure to pornography, particularly where this was unwanted and had happened to a child. There can be no doubt that the impact of having been shown pornography, or of having been forced to see this matter, was vividly recalled by those persons to whom this had happened when they were children. In this regard, one in 15 persons (6.8 per cent) stated that such exposure had affected his or her views, or those of someone whom they knew well, towards sexual behaviour and their relations with others later in their lives. The long-term moral, psychological and social consequences of these exposures, however, are insufficiently documented in the case studies in relation to the impact of other types of depictions which these persons may have been exposed. There is no evidence in these findings, for instance, that compares the impact of exposure to pornography on a child with that which may result from their having seen scenes on television or movies depicting violence involving physical assault and murder.

A second kind of harm associated with unwanted exposure of children to pornography identified by persons contacted in the National Population Survey is situations in which these materials were shown and a child or youth had been sexually assaulted by the same person. In light of the findings obtained, there is no doubt that such incidents occur. The personal accounts and the cases investigated by the police also identify a third type of harm associated with exposure of children to pornography. In these accounts, a number of children had been threatened or coerced, had sustained physical injuries, or had incurred a risk to their health (e.g., introduction to the use of drugs or alcohol).

The Committee's recommendations concerning the making, distribution, sale and display of child pornography and accessibility by children to pornogra-

phy are given elsewhere in the Report. The findings given in this chapter concerning the actual and potential harms of exposure to pornography to children support the need for special statutory provisions to afford children better protection. In addition to the reform of the law concerning these issues, more complete documentation is required of the nature of the long-term effects of exposure to children of pornography. Accordingly, the Committee recommends, in conjunction with other means proposed to afford better protection for children, that a comprehensive study be commissioned to consider the long-term effects of exposure to children of pornography, particularly focussing on where it does and where it does not have subsequent negative effects and the factors that distinguish these situations.



## References

### Chapter 55: Associated Harms

- <sup>1</sup> *United States Commission on Obscenity and Pornography*, New York: Bantam Books, 1970.
- <sup>2</sup> United Kingdom. Home Office. *Report of the Committee on Obscenity and Film Censorship*, London: H.M.S.O., 1979.
- <sup>3</sup> U.S. Commission on Obscenity and Pornography, *op. cit.*, p. 466.
- <sup>4</sup> U.K. Report of the Committee on Obscenity and Film Censorship, *op. cit.*, p. 66.
- <sup>5</sup> *Ibid.*, p. 65.
- <sup>6</sup> *Ibid.*, p. 65-66, Emphasis in italics added.
- <sup>7</sup> U.S. Commission on Obscenity and Pornography, *op. cit.*, p. 487.
- <sup>8</sup> U.K. Report of the Committee on Obscenity and Film Censorship, *op. cit.*, p. 88-89.
- <sup>9</sup> *Ibid.*, p. 63.



# Appendices





## **Sexual Offences and the Protection of Young Persons** **(Bill C-53, 1st Session, 32<sup>nd</sup> Parliament, 29 Elizabeth II, 1980-81)**

An Act to amend the Criminal Code in relation to sexual offences and the protection of young persons and to amend certain other Acts in relation thereto or in consequence thereof

First Reading, January 12, 1981

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

### **CRIMINAL CODE**

1. Section 2 of the *Criminal Code* is amended by adding thereto, immediately after the definition “clerk of the court”, the following definition:

““complainant” means the person against whom it is alleged that an offence was committed;”

2. Subsection 3(1) of the said Act is repealed.

3. All that portion of subsection 6(1.2) of the said Act preceding paragraph (a) thereof is repealed and the following substituted therefor:

“(1.2) Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission against the person of an internationally protected person or against any property referred to in section 387.1 (attack on official premises, etc.) used by him that if committed in Canada would be an offence against that section or section 218 (murder), 219 (manslaughter), 245 (assault), 245.1 (assault causing serious bodily harm), 245.2 (unlawfully causing serious bodily harm), 246.1 (sexual assault), 246.2 (aggravated sexual assault), 247 (kidnapping) or 381.1 (threats against internationally protected persons) shall be deemed to commit that act or omission in Canada if”

4. Sections 17 and 18 of the said Act are repealed and the following substituted therefor:

“17. A person who commits an offence under compulsion by threats of immediate death or serious bodily harm from a person who is present when the offence is committed is excused for committing the offence if he believes that the threats will be carried out and if he is not a party to a

conspiracy or association whereby he is subject to compulsion, but this section does not apply where the offence that is committed is high treason or treason, murder, piracy, attempted murder, sexual assault, aggravated sexual assault, forcible abduction, robbery, assault causing serious bodily harm, unlawfully causing serious bodily harm or arson.

18. No presumption arises that a married person who commits an offence does so under compulsion by reason only that the offence is committed in the presence of the spouse of that married person.”

5. The headings preceding section 138 and sections 138 to 158 of the said Act are repealed and the following substituted therefor:

**“PART IV  
PUBLIC MORALS, DISORDERLY CONDUCT AND  
SEXUAL EXPLOITATION OF YOUNG PERSONS**

*Interpretation*

158. In this Part,

“guardian” includes any person who has in law or in fact the custody or control of another person;

“public place” includes any place to which the public has access as of right or by invitation, express or implied;

“theatre” includes any place that is open to the public where entertainments are given, whether or not any charge is made for admission.”

6. Sections 166 to 168 of the said Act are repealed and the following substituted therefor:

*“Sexual Exploitation of Young Persons*

166. (1) Every one who engages in or procures sexual misconduct with or by a person who

(a) is not his spouse and

(b) is under the age of fourteen years,

is guilty of an indictable offence and is liable to imprisonment for ten years.

(2) No one shall be found guilty of an offence under subsection (1) if he establishes that

(a) at the time the sexual misconduct took place, he was under fourteen years of age; or

(b) he is less than three years older than the complainant.



(3) Where an accused is charged with an offence under subsection (1), it is not a defence to the charge that the complainant consented to the sexual misconduct or that the accused believed at the time the sexual misconduct took place that the complainant was fourteen years of age or more.

**167.** (1) Every one who engages in or procures sexual misconduct with or by a person who

(a) is not his spouse, and

(b) is fourteen years of age or more and is under the age of sixteen years, is guilty of an indictable offence and is liable to imprisonment for five years.

(2) No one shall be found guilty of an offence under subsection (1) if he establishes that

(a) at the time the sexual misconduct took place he was under sixteen years of age;

(b) he is less than three years older than the complainant;

(c) he believed at the time of the sexual misconduct took place that the complainant was sixteen years of age or more; or

(d) he is less responsible than the complainant for the sexual misconduct that took place.

**168.** (1) Every one who, being the parent or guardian or having the lawful care or charge of or exercising authority over a person under sixteen years of age,

(a) engages in sexual misconduct with or procures or (sic) by that person is guilty of an indictable offence and is liable to imprisonment for ten years; or

(b) knowingly permits the sexual misconduct of that person is guilty of an indictable offence and is liable to imprisonment for five years.

(2) Every one who, being the owner, occupier or manager of premises, knowingly permits the premises to be used for the purposes of sexual misconduct involving a person under sixteen years of age is guilty of an indictable offence and is liable to imprisonment for two years.

(3) No one shall be found guilty of an offence under this section if he establishes that he believed at the time the sexual misconduct took place that the complainant was sixteen years of age or more.

**168.1** (1) Every one commits incest who, knowing that another person is his blood relative, has sexual intercourse with that person.

(2) Every one who commits incest is guilty of an indictable offence and is liable to imprisonment for ten years.

(3) No person shall be found guilty of incest if he establishes that he acted under restraint, duress or fear of the person with whom he had the sexual intercourse.

(4) In subsection (1), “blood relative” means a parent, child, brother, sister, half-brother, half-sister, grandparent or grandchild.

**168.2 (1)** Every one who knowingly

(a) induces, coerces or agrees to use a person under sixteen years of age to participate in any sexually explicit conduct for the purpose of producing, by any means, a visual representation of such conduct,

(b) participates in the production of a visual representation of a person under sixteen years of age participating in any sexually explicit conduct,

(c) makes, prints, reproduces, publishes, distributes, circulates or has in his possession for the purpose of publication, distribution or circulation a visual representation of a person under sixteen years of age participating in any sexually explicit conduct, or

(d) sells, offers to sell, receives for sale, advertises, exposes to public view or has in his possession for the purpose of sale a visual representation of a person under sixteen years of age participating in any sexually explicit conduct,

is guilty of an indictable offence and is liable to imprisonment for five years or is guilty of an offence punishable on summary conviction.

(2) For the purposes of subsection (1), a person who at any material time appears to be under sixteen years of age shall, in the absence of evidence to the contrary, be deemed to be under sixteen years of age.

(3) Subsections 159(3) to (5) apply, with such modifications as the circumstances require, to a person charged with an offence under subsection (1).

**168.3** In any proceeding under this Part, where a court is satisfied that a matter or thing is obscene or is a visual representation referred to in subsection 168.2(1), the court shall order the matter or thing to be forfeited to Her Majesty in right of the province in which the proceedings take place, for disposal as the Attorney General may direct.”

7. The said Act is further amended by adding thereto, immediately after section 169 thereof, the following section:

“**169.1 (1)** Every one who commits an act of gross indecency with another person is guilty of an indictable offence and is liable to imprisonment for five years.

(2) Subsection (1) does not apply to any act committed in private between

(a) a husband and his wife, or

(b) persons each of whom is eighteen years of age or more.”

8. Section 175 of the said Act is repealed.

9. The definition “offence” in section 178.1 of the said Act is amended by striking out the reference to “79 (causing injury with intent)” where it occurs therein and substituting a reference to “79 (using explosives)”, by striking out the reference to “144 (rape)” and “245(2) (assault causing bodily harm)”, where it occurs therein and by adding, immediately after the reference to “218 (murder)”, a reference to “245.1 (assault causing serious bodily harm), 245.2 (unlawfully causing serious bodily harm), 246.1 (sexual assault), 246.2 (aggravated sexual assault),”.

10. Subsection 179(1) of the said Act is amended by adding thereto, immediately after the definition “place”, the following definition:

“ “prostitute” means a person of either sex who engages in prostitution;”

11. Sections 182 and 183 of the said Act are repealed.

12. Subsections 195(1) and (2) of the said Act are repealed and the following substituted therefor:

“195. (1) Every one who

(a) procures, attempts to procure or solicits a person to have illicit sexual intercourse with another person, whether in or out of Canada,

(b) inveigles or entices a person who is not a prostitute or a person of known immoral character to a common bawdy-house or house of assignation for the purpose of illicit sexual intercourse or prostitution,

(c) knowingly conceals a person in a common bawdy-house or house of assignation,

(d) procures or attempts to procure a person to become, whether in or out of Canada, a prostitute,

(e) procures or attempts to procure a person to leave the usual place of abode of that person in Canada, if that place is not a common bawdy-house, with intent that the person may become an inmate or frequenter of a common bawdy-house, whether in or out of Canada,

(f) on the arrival of a person in Canada, directs or causes that person to be directed or takes or causes that person to be taken, to a common bawdy-house or house of assignation,

(g) procures a person to enter or leave Canada, for the purpose of prostitution,

(h) for the purposes of gain, exercises control, direction or influence over the movements of a person in such manner as to show that he is aiding, abetting or compelling that person to engage in or carry on prostitution with any person or generally,

(i) applies or administers to a person or causes that person to take any drug, intoxicating liquor, matter or thing with intent to stupefy or overpower that person in order thereby to enable any person to have illicit sexual intercourse with that person, or



(j) lives wholly or in part on the avails of prostitution of another person, is guilty of an indictable offence and is liable to imprisonment for ten years.

(2) Evidence that a person lives with or is habitually in the company of prostitutes, or lives in a common bawdy-house or house of assignation is, in the absence of any evidence to the contrary, proof that he lives on the avails of prostitution.”

**13.** Section 201 of the said Act is repealed.

**14.** All that portion of section 213 of the said Act preceding paragraph (a) thereof is repealed and the following substituted therefor:

“**213.** Culpable homicide is murder where a person causes the death of a human being while committing or attempting to commit high treason or treason or an offence mentioned in section 52 (sabotage), 76 (piratical acts), 76.1 (hijacking aircraft), 132 or subsection 133(1) or sections 134 to 136 (escape or rescue from prison or lawful custody), section 246 (assaulting a peace officer), section 246.1 (sexual assault), 246.2 (aggravated sexual assault), 247 (kidnapping and forcible confinement), 302 (robbery), 306 (breaking and entering) or 389 or 390 (arson), whether or not the person means to cause death to any human being and whether or not he knows that death is likely to be caused to any human being, if”

**15.** Subsection 214(5) of the said Act is repealed and the following substituted therefor:

“(5) Irrespective of whether a murder is planned and deliberate on the part of any person, murder is first degree murder in respect of a person when the death is caused by that person while committing or attempting to commit an offence under one of the following sections:

(a) section 76.1 (hijacking aircraft);

(b) section 246.1 (sexual assault);

(c) section 246.2 (aggravated sexual assault); or

(d) section 247 (kidnapping and forcible confinement).”

**16.** Section 228 of the said Act is repealed.

**17.** Paragraph 242(3)(b) of the said Act is repealed and the following substituted therefor:

“(b) is guilty of an offence under section 245.2, if serious bodily harm to any person results therefrom; or”

**18.** Sections 244 to 246 of the said Act are repealed and the following substituted therefor:

“**244. (1)** A person commits an assault when

(a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;

(b) he attempts or threatens, by an act or gesture to apply force to another person, if he has, or causes that other person to believe upon reasonable grounds that he has, present ability to effect his purpose; or

(c) while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person and begs.

(2) This section applies to all forms of assault, including sexual assault and aggravated sexual assault.

(3) For the purposes of this section, no consent is obtained where the complainant submits or does not resist by means of

(a) the application of force;

(b) threats or fear of the application of force;

(c) fraud; or

(d) the exercise of authority.

(4) For the purposes of this section,

(a) it is a question of fact whether the complainant consented or not; and

(b) consent shall not necessarily be inferred from the fact that the complainant submitted to or did not resist the application of force.

(5) Where a question is raised as to whether the accused believed that the complainant consented to the conduct that is the subject-matter of the charge, the jury shall be instructed, in determining the honesty of that belief, to consider, along with any other relevant matter, the presence or absence of reasonable grounds for that belief.

**245.** Every one who commits an assault is guilty of

(a) an indictable offence and is liable to imprisonment for two years; or

(b) an offence punishable on summary conviction.

**245.1** Every one who commits an assault that causes serious bodily harm to any person is guilty of an indictable offence and is liable to imprisonment for ten years.

**245.2** Every one who unlawfully causes serious bodily harm to any person is guilty of an indictable offence and is liable to imprisonment for ten years.

**246.** (1) Every one commits an offence who

(a) assaults a public officer or peace officer engaged in the execution of his duty or a person acting in aid of such an officer;

(b) assaults a person with intent to resist or prevent the lawful arrest or detention of himself or another person; or

(c) assaults a person

- (i) who is engaged in the lawful execution of a process against lands or goods or in making a lawful distress or seizure, or
- (ii) with intent to rescue anything taken under a lawful process, distress or seizure.

(2) Every one who commits an offence under subsection (1) is guilty of

- (a) an indictable offence and is liable to imprisonment for five years; or
- (b) an offence punishable on summary conviction.

**246.1** Every one who commits a sexual assault is guilty of an indictable offence and is liable to imprisonment for ten years.

**246.2** (1) Every one commits an aggravated sexual assault who

- (a) uses a weapon during or at the time he commits a sexual assault; or
- (b) commits a sexual assault that causes serious bodily harm.

(2) Every one who commits an aggravated sexual assault is guilty of an indictable offence and is liable to imprisonment for life.

**246.3** (1) Where an accused is charged with an offence under section 166 (sexual misconduct with person under fourteen), 167 (sexual misconduct with person between fourteen and sixteen), 168 (sexual misconduct by parent, guardian, etc.), 168.1 (incest), 169.1 (gross indecency), 246.1 (sexual assault) or 246.2 (aggravated sexual assault), no corroboration is required for a conviction and the judge shall not instruct the jury that it is unsafe to find the accused guilty in the absence of corroboration.

(2) Nothing in subsection (1) prevents a judge from commenting on the credibility of a witness in his charge to the jury.

**246.4** (1) The rule that permits a previous consistent statement of a complainant to be admitted in evidence as a recent complaint is abrogated.

(2) In a proceeding for an offence in which a question is raised as to the consent of the complainant to the conduct of the accused, the complainant may give evidence of the making of a complaint concerning that conduct, but no evidence may be given of the particulars of the complaint unless the accused has questioned the credibility of the complainant on the basis of recent fabrication or previous inconsistent statement relating to that conduct.

(3) The judge in a proceeding referred to in subsection (2) is not required to give the jury any direction respecting the lack of a complaint concerning the conduct of the accused made within a reasonable time subsequent to the offence.



**246.5** (1) Where an accused is charged with an offence under section 166 (sexual misconduct with person under fourteen), 168 (sexual misconduct by parent, guardian, etc.), 168.1 (incest), 169.1 (gross indecency), 246.1 (sexual assault) or 246.2 (aggravated sexual assault), no question shall be asked by or on behalf of the accused concerning the sexual activity of the complainant with a person other than the accused unless

(a) it relates to evidence that tends to show that the accused believed that the complainant consented to the sexual activity that is the subject-matter of the charge; or

(b) it tends to rebut evidence of the complainant's sexual activity that was previously introduced by the prosecution.

(2) No evidence is admissible under paragraph (1)(a) unless

(a) reasonable notice in writing has been given to the prosecutor by or on behalf of the accused of his intention to adduce the evidence together with particulars of the evidence sought to be adduced; and

(b) a copy of the notice has been filed with the clerk of the court.

(3) No evidence is admissible under subsection (1) unless the judge, magistrate or justice, after holding a hearing in which the jury and the members of the public are excluded and in which the complainant is not a compellable witness, is satisfied that the requirements of this section are met.

(4) The notice given under subsection (2) and the evidence taken, the information given or the representations made at a hearing referred to in subsection (3) shall not be published in any newspaper or broadcast.

(5) Every one who, without lawful excuse the proof of which lies upon him, contravenes subsection (4) is guilty of an offence punishable on summary conviction.

(6) In this section, "newspaper" has the same meaning as in section 261."

**19.** Sections 248 to 250 of the said Act are repealed and the following substituted therefor:

**"249.** (1) Every one who, without lawful authority, takes or causes to be taken an unmarried person under the age of sixteen years out of the possession of and against the will of the parent or guardian of that person or of any other person who has the lawful care or charge of that person is guilty of an indictable offence and is liable to imprisonment for five years.

(2) For the purpose of proceedings under this section, it is not a defence to the the charge that

(a) the person taken consents to or suggests the taking; or

(b) the accused believes that the person taken is sixteen years of age or more.

**250.** Every one who, not being the parent, guardian or person having the lawful care or charge of a child under the age of fourteen years, unlawfully has the possession of that child with intent to deprive a parent or guardian or any other person who has the lawful care or charge of that child of the possession of that child, is guilty of an indictable offence and is liable to imprisonment for ten years.

**250.1** (1) Every one who, being the parent, guardian or person having the lawful care or charge of a child under the age of fourteen years,

(a) has the possession of that child in contravention of the custody or access provisions of a custody order in relation to that child made by a court anywhere in Canada, or

(b) where there is no custody order in relation to that child made by a court anywhere in Canada, has the possession of that child with intent to deprive a parent or guardian or any other person who has the lawful care or charge of that child of the possession of that child,

unless the parent, guardian or other person from whose lawful possession, care or charge the child was taken had consented to the taking, is guilty of an indictable offence and is liable to imprisonment for five years for an offence under paragraph (a) or to imprisonment for two years for an offence under paragraph (b).

(2) No proceedings may be commenced under subsection (1) without the consent of the Attorney General.

**250.2** Sections 250 and 250.1 do not apply to a person who has the possession of a child in circumstances where the court is satisfied that such possession was essential for the welfare of that child, but the court shall not be so satisfied by reason only of the granting of a custody order in favour of the accused after he obtained the possession of that child.”

**20.** Subsection 256(1) of the said Act is repealed and the following substituted therefor:

“**256.** (1) Every person who procures or knowingly aids in procuring a feigned marriage between himself and another person is guilty of an indictable offence and is liable to imprisonment for five years.”

**21.** Paragraph 381(1)(a) of the said Act is repealed and the following substituted therefor:

“(a) uses violence or threats of violence to that person or his spouse or children, or injures his property,”

**22.** Paragraph 423(1)(c) of the said Act is repealed.

**23.** (1) Subparagraphs 429.1(a)(ii) and (iii) of the said Act are repealed and the following substituted therefor:

“(ii) section 246.2,”

(2) Paragraph 429.1(b) of the said Act is repealed and the following substituted therefor:

“(b) the offence of attempting to commit any offence referred to in paragraph (a), other than an offence under section 222, or”

**24.** Subsection 442(3) of the said Act is repealed and the following substituted therefor:

“(3) Where an accused is charged with an offence mentioned in section 246.3, the presiding judge, magistrate or justice may, or if application is made by the complainant or prosecutor, shall, make an order directing that the identity of the complainant and any information that could disclose the identity of the complainant shall not be published in any newspaper or broadcast.

(3.1) The presiding judge, magistrate or justice shall, at the first reasonable opportunity, inform the complainant of the right to make an application for an order under subsection (3).”

**25.** Paragraph 483(c) of the said Act is amended by adding thereto, immediately after subparagraph (vii) thereof, the following subparagraph:

“(viii) section 245 (assault),”

**26.** Paragraph (b) of the definition “serious personal injury offence” in section 687 of the said Act is repealed and the following substituted therefor:

“(b) an offence or attempt to commit an offence mentioned in section 166 (sexual misconduct with person under fourteen), 167 (sexual misconduct with person between fourteen and sixteen), 168 (sexual misconduct by parent, guardian, etc.), 169.1 (gross indecency), 246.1 (sexual assault) or 246.2 (aggravated sexual assault).”

**27.** Section 727 of the said Act is repealed.

**28.** Subsection 745(1) of the said Act is repealed and the following substituted therefor:

“745. (1) Any person who fears that another person will cause personal injury to him or his spouse or child or will damage his property may lay an information before a justice.”

**29.** (1) Wherever the expression “serious bodily injury” appears in the definition “firearm” in subsection 82(1) and in paragraph 380(1)(b) of the English version of the said Act, there shall in each case be substituted therefor the expression “serious bodily harm”.

(2) Wherever the expression “grievous bodily harm” appears in subsection 25(3) and sections 34 and 35 of the English version of the said Act, there shall in each case be substituted therefor the expression “serious bodily harm”.



(3) Wherever the expression “bodily harm” appears in subsection 38(1), paragraph 49(b), section 77, paragraph 78(b), paragraph 79(1)(b) and sections 83 and 204 of the English version of the said Act, there shall in each case be substituted therefor the expression “bodily injury”.

(4) Wherever the expression “bodily harm” appears in paragraph 229(a), subsection 231(1) and section 232 of the English version of the said Act, there shall in each case be substituted therefor the expression “serious bodily harm”.

30. (1) Wherever the expression “blessures corporelles graves” appears in paragraph 35(c) and 380(1)(b) of the French version of the said Act, there shall in each case be substituted therefor the expression “lésions corporelles graves.”

(2) Wherever the expression “lésions corporelles” appears in paragraph 49(b), subsection 83(1) and section 204 of the French version of the said Act, there shall in each case be substituted therefor the expression “blessures corporelles.”

(3) Wherever the expression “lésion corporelle” appears in subsection 38(1) of the French version of the said Act, there shall in each case be substituted therefor the expression “blessure corporelle”.

(4) Wherever the expression “lésions corporelles” appears in paragraph 229(a), subsection 231(1) and section 232 of the French version of the said Act, there shall in each case be substituted therefor the expression “lésions corporelles graves”.

## CANADA EVIDENCE ACT

31. (1) Subsection 4(2) of the *Canada Evidence Act* is repealed and the following substituted therefor:

“(2) The wife or husband of a person charged with an offence or attempt to commit an offence against section 33 or 34 of the *Juvenile Delinquents Act* or with an offence against any of sections 166 to 169.1, 195, 197, 200, 246.1, 246.2, 249, 250, 250.1, 255 to 258 or 289 of the *Criminal Code*, is a competent and compellable witness for the prosecution without the consent of the person charged.”

(2) Section 4 of the said Act is further amended by adding thereto, immediately after subsection (3) thereof, the following subsection:

“(3.1) The wife or husband of a person charged with an offence against any of sections 203, 204, 218, 219, 220, 222, 223, 245, 245.1 or 245.2 of the *Criminal Code* where the complainant or victim is under the age of fourteen years is a competent and compellable witness for the prosecution without the consent of the person charged.”

## DIVORCE ACT

**32.** Paragraph 3(b) of the *Divorce Act* is repealed and the following substituted therefor:

“(b) has committed an assault involving sexual intercourse, an act of sodomy or bestiality or has engaged in a homosexual act;”

## EXTRADITION ACT

**33.** (1) Item 10 of Schedule I to the *Extradition Act* is repealed and the following substituted therefor:

“**10.** Sexual assault or aggravated sexual assault;”

(2) Item 22 of Schedule I of the said Act is repealed and the following substituted therefor:

“**22.** Assault on board a vessel of a foreign state at sea, whether on the high seas or on the Great Lakes of North America, with intent to destroy life or to do serious bodily harm;”

(3) Paragraph (a) of item 24 of Schedule I to the said Act is repealed and the following substituted therefor:

“(a) sections 52, 58, 59, 77 to 79, 166 to 168, 174, 343 to 349, 351 to 354, subsection 355(1), sections 356, 358, 359, 363 and paragraph 423(1)(a) of the *Criminal Code*;”

(4) Items 8 and 9 of Schedule III to the said Act are repealed and the following substituted therefor:

“**8.** Sexual assault or aggravated sexual assault;

**9.** Abduction;”

(5) Item 19 of Schedule III to the said Act is repealed and the following substituted therefor:

“**19.** Assault on board a vessel of a foreign state at sea, whether on the high seas or on the Great Lakes of North America, with intent to destroy life or to do serious bodily harm;”

## NATIONAL DEFENCE ACT

**34.** Section 60 of the *National Defence Act* is repealed and the following substituted therefor:

“**60.** A service tribunal shall not try any person charged with an offence of murder, manslaughter, or aggravated sexual assault committed in Canada.”

## TRANSITIONAL AND COMMENCEMENT

35. An offence committed prior to the coming into force of this Act against any provision of law affected by this Act shall be dealt with in all respects as if this Act had not come into force.

36. For the purposes of paragraph 3(b) of the *Divorce Act*, as enacted by section 32 of this Act, a person who is found to have committed rape, as it was known prior to the coming into force of this Act, shall be deemed to have committed an assault involving sexual intercourse.

37. This Act or any provision thereof shall come into force on a day or days to be fixed by proclamation.



## **Working Paper for Offences against Young Persons**

(Discussion Paper prepared by the federal  
Department of Justice dealing with  
Sexual Offences against Young Persons and  
revising some of the provisions of Bill C-53).

### **CRIMINAL CODE**

1. The *Criminal Code* is amended by adding thereto, immediately after section 137 thereof, the following:

#### **“PART III.1 OFFENCES AGAINST YOUNG PERSONS**

##### *Interpretation*

**137.1** In this Part,

“guardian” includes any person who has in law or in fact the custody or control of another person;

“sexual conduct” includes any touching of a sexual nature or any sexual performance, but does not include conduct of an affectionate nature that is normal in a family context;

“sexual exploitation”, in relation to a young person, means any sexual conduct where the young person is involved as a participant or otherwise;

“sexual performance” includes any pose, dance, photograph, motion picture, play or other visual representation in which vaginal, oral, or anal intercourse, bestiality, masturbation or sado-masochistic abuse, whether actual or simulated, or in which the lewd exhibition of the genitals, occurs or is depicted;

“visual representation” includes any representation that can be seen by any means, whether or not it involves the use of any special apparatus.

##### *Sexual Exploitation of Young Persons*

**137.2 (1)** Every one who engages in or procures the sexual exploitation of a person who

(a) is not his spouse, and

(b) is under the age of fourteen years,

is guilty of an indictable offence and is liable to imprisonment for fourteen years.

(2) No one shall be found guilty of the offence of engaging in the sexual exploitation of a person under subsection (1) if he establishes that

(a) at the time the sexual exploitation took place, he was under fourteen years of age; or

(b) he is less than three years older than the complainant.

**137.3** (1) Every one who engages in or procures the sexual exploitation of a person who

(a) is not his spouse, and

(b) is fourteen years of age or more and is under the age of sixteen years,

is guilty of an indictable offence and is liable to imprisonment for ten years.

(2) No one shall be found guilty of the offence of engaging in the sexual exploitation of a person under subsection (1) if he establishes that

(a) at the time the sexual exploitation took place he was under sixteen years of age; or

(b) he is less than five years older than the complainant.

**137.4** (1) Every one who, being the parent or guardian or having the lawful care or charge of or exercising authority over a person under eighteen years of age, engages in or procures the sexual exploitation of that person is guilty of an indictable offence and is liable to imprisonment for fourteen years.

(2) No one exercising authority over the complainant shall be found guilty of an offence under subsection (1) if he establishes that he is less than five years older than the complainant.

**137.5** (1) Every one who, being the owner, occupier or manager of premises, permits the premises to be used for the purposes of the sexual exploitation of a person under sixteen years of age is guilty of an indictable offence and is liable to imprisonment for five years.

(2) No one shall be found guilty of an offence under subsection (1) if he establishes that he believed on reasonable grounds at the time the sexual exploitation took place that the complainant was sixteen years of age or more.

### *Child Pornography*

**137.6** (1) Every one who

(a) induces, coerces or agrees to use a person who is or appears to be under eighteen years of age to participate in any sexual conduct for the purpose of producing, by any means, a pornographic visual representation of such conduct,

(b) participates in the production of a pornographic visual representation of a person who is or appears to be under eighteen years of age participating in any sexual conduct,

(c) makes, prints, reproduces, publishes, distributes, circulates or has in his possession for the purpose of publication, distribution or circulation a pornographic visual representation of a person who is or appears to be under eighteen years of age participating in any sexual conduct, or

(d) sells, offers to sell, receives for sale, advertises, exposes to public view or has in his possession for the purpose of sale a pornographic visual representation of a person who is or appears to be under eighteen years of age participating in any sexual conduct,

is guilty of an indictable offence and is liable to imprisonment for ten years.

(2) For the purposes of subsection (1), a visual representation is pornographic if an object of the production thereof is an appeal to the sexual appetite or creation of sexual arousal.

(3) Subsections 159(3) to (5) apply, with such modifications as the circumstances require, to a person charged with an offence under subsection (1).

(4) In any proceeding under this Part, where a court is satisfied that a matter or thing is a pornographic visual representation referred to in subsection (1), the court shall order the matter or thing to be forfeited to Her Majesty in right of the province in which the proceedings take place, for disposal as the Attorney General may direct.

### *General*

**137.7** For the purpose of proceedings in respect of an offence under this Part, unless expressly provided otherwise in relation to any offence, it is not a defence to any charge that

(a) the complainant consented to any conduct of the accused; or

(b) the accused reasonably believed, at the time the conduct complained of took place, that the complainant had attained an age exceeding the age in relation to which the conduct was punishable.

**137.8** In proceedings in respect of an offence under this Part,

(a) no evidence shall be adduced by or on behalf of the accused concerning the sexual activity of the complainant with any person, unless it is evidence of the sexual activity that formed the subject-matter of the charge;

(b) evidence of reputation, whether general or specific, is not admissible for the purpose of challenging or supporting the credibility of the complainant; and



(c) no corroboration is required for a conviction and the judge shall not instruct the jury that it is unsafe to find the accused guilty in the absence of corroboration.”

2. Sections 140 and 141 of the said Act are repealed and the following substituted therefor:

“140. Where an accused is charged with an offence under section 149 or 156 in respect of a person under the age of fourteen years, the fact that the person consented to the commission of the offence is not a defence to the charge.”

3. Sections 146 and 147 of the said Act are repealed and the following substituted therefor:

“147. No person shall be deemed to commit an offence under section 144, 145 or 150 while that person is under the age of fourteen years.”

4. Sections 151 to 154 of the said Act are repealed.

5. Sections 166 to 168 of the said Act are repealed.

6. Section 175 of the said Act is repealed.

7. The definition “offence” in section 178.1 of the said Act is amended by striking out the reference to “79 (causing injury with intent)” where it occurs therein and substituting a reference to “79 (using explosives)” and by adding, immediately after the reference to “132 (prison breach)” a reference to “137.2 (sexual exploitation of person under fourteen), 137.3 (sexual exploitation of person between fourteen and sixteen), 137.4 (sexual exploitation by parent, guardian, etc.), 137.5 (use of premises for sexual exploitation), 137.6 (pornographic visual representation of sexual conduct of young persons),”.

8. All that portion of section 213 of the said Act preceding paragraph (a) thereof is repealed and the following substituted therefor:

“213. Culpable homicide is murder where a person causes the death of a human being while committing or attempting to commit high treason or treason or an offence mentioned in section 52 (sabotage), 76 (piratical acts), 76.1 (hijacking an aircraft), 132 or subsection 133(1) or sections 134 to 136 (escape or rescue from prison or lawful custody), 137.2 (sexual exploitation of person under fourteen), 137.3 (sexual exploitation of person between fourteen and sixteen), 137.4 (sexual exploitation by parent, guardian, etc.), 137.5 (use of premises for sexual exploitation), 137.6 (pornographic visual representation of sexual conduct of young persons), 143 (rape), 149 or 156 (indecent assault), subsection 246(2) (resisting lawful arrest), section 247 (kidnapping and forcible confinement), 302 (robbery), 306 (breaking and entering) or 389 or 390 (arson), whether or not the person means to cause death to any human being and whether or not he knows that death is likely to be caused to any human being, if”

9. Subsection 214(5) of the said Act is repealed and the following substituted therefor:

“(5) Irrespective of whether a murder is planned and deliberate on the part of any person, murder is first degree murder in respect of a person when the death is caused by that person while committing or attempting to commit an offence under one of the following sections:

- (a) section 76.1 (hijacking an aircraft);
- (b) sections 137.2 to 137.5 (sexual exploitation of young persons);
- (c) section 137.6 (pornographic visual representation of sexual conduct of young persons);
- (d) section 144 (rape), 149 (indecent assault on female) or 156 (indecent assault on male); or
- (e) section 247 (kidnapping and forcible confinement).”

10. Subparagraphs 429.1(a)(ii) and (iii) of the said Act are repealed and the following substituted therefor:

- “(ii) sections 137.2 to 137.6,
- (iii) section 144 or 145,”

11. Subsections 442(2) and (3) of the said Act are repealed and the following substituted therefor:

“(2) Where an accused is charged with an offence under sections 137.2 to 137.6 or that is mentioned in subsection 142(1) and the prosecutor or the accused makes an application for an order under subsection (1), the presiding judge, magistrate or justice, as the case may be, shall, if no such order is made, state, by reference to the circumstances of the case, the reason for not making an order.

(3) Where an accused is charged with an offence under sections 137.2 to 137.6 or that is mentioned in subsection 142(1), the presiding judge, magistrate or justice may, or if application is made by the complainant or prosecutor, shall, make an order directing that the identity of the complainant and any information that could disclose the identity of the complainant shall not be published in any newspaper or broadcast.

(3.1) The presiding judge, magistrate or justice shall, at the first reasonable opportunity, inform the complainant of the right to make an application for an order under subsection (3).”

12. Paragraph (b) of the definition “serious personal injury offence” in section 687 of the said Act is repealed and the following substituted therefor:

“(b) an offence or attempt to commit an offence mentioned in sections 137.2 to 137.5 (sexual exploitation of young persons), section 137.6 (pornographic visual representation of sexual conduct of young persons), 144 (rape), 145 (attempted rape), 146 (sexual intercourse with a female under fourteen or between fourteen and sixteen), 149 (indecent assault on a female), 156 (indecent assault on a male) or 157 (gross indecency).”

13. The said Act is further amended by adding thereto, immediately after section 745 thereof, the following section:

“745.1 (1) Any person who has reasonable grounds for believing that a person who has been found guilty of an offence under Part III.1 or sections 143 to 157 has been wandering or loitering in or near a school ground, playground, public park, bathing area or other place normally frequented by young persons may lay an information before a justice.

(2) A justice who receives an information under subsection (1) shall cause the parties to appear before him or before a summary conviction court having jurisdiction in the same territorial division.

(3) Where the justice or the summary conviction court is satisfied by the evidence adduced that the informant had reasonable grounds for laying an information, the justice or court may

(a) order that the defendant enter into a recognizance, with or without sureties, to keep the peace and be of good behaviour for any period that does not exceed twelve months, and comply with such other reasonable conditions prescribed in the recognizance as the court considers desirable for securing the good conduct of the defendant; or

(b) commit the defendant to prison for a term not exceeding twelve months if he fails or refuses to enter into the recognizance.

(4) A recognizance and committal to prison in default of recognizance under subsection (3) may be in Forms 28 and 20 respectively.

(5) The provisions of this Part apply, with such modifications as the circumstances require, to proceedings under this section.”

## CANADA EVIDENCE ACT

14. (1) Subsection 4(2) of the *Canada Evidence Act* is repealed and the following substituted therefor:

“(2) The wife or husband of a person charged with an offence or attempt to commit an offence against section 33 or 34 of the *Juvenile Delinquents Act* or with an offence against any of sections 137.2 to 137.6, 143 to 146, 148, 150 to 155, 157, 169, 175, 195, 197, 200, 248 to 250, 255 to 258 or 289 or paragraph 423(1)(c) of the *Criminal Code*, is a competent and compellable witness for the prosecution without the consent of the person charged.”



(2) Section 4 of the said Act is further amended by adding thereto, immediately after subsection (3) thereof, the following subsection:

“(3.1) The wife or husband of a person charged with an offence against any of sections 203, 204, 218, 219, 220, 222, 223 or 245 of the *Criminal Code*, where the complainant or victim is under the age of fourteen years, is a competent and compellable witness for the prosecution without the consent of the person charged.”

#### COMMENCEMENT

**15.** This Act or any provision thereof shall come into force on a day or days to be fixed by proclamation.



**Criminal Law Reform Act, 1984**  
**(Excerpts from Bill C-19, 2nd Session, 32nd  
Parliament, 32-33 Elizabeth II, 1983-84)**

First Reading, February 7, 1984

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

1. This Act may be cited as the *Criminal Law Reform Act, 1984*.

**PART I**  
**CRIMINAL CODE**

35. Subsection 150(3) of the said Act is repealed and the following substituted therefor:

“(3) Notwithstanding subsection 660(1), where a court determines that a female person is guilty of an offence under this section and the court is satisfied that she committed the offence by reason only that she was under restraint, duress or fear of the person with whom she had the sexual intercourse, the court may, instead of convicting that person, discharge her under section 660 of that offence.”

36. Subsection 159(8) of the said Act is repealed and the following substituted therefor:

“(8) For the purposes of this Act, any matter or thing is obscene where a dominant characteristic of the matter or thing is the undue exploitation of any one or more of the following subjects, namely, sex, violence, crime, horror or cruelty, through degrading representations of a male or female person or in any other manner.

(9) Where a court convicts a person of an offence under this section, it shall make an order declaring the matter or thing by means of or in relation to which the offence was committed forfeited to Her Majesty in right of the province in which the proceedings took place, for disposal as the Attorney General may direct.”



48. Section 195.1 of the said Act is amended by adding thereto the following subsection:

“(2) In this section,

“prostitution” includes obtaining the services of a prostitute;

“public place” includes a motor vehicle located in or on a public place.”

58. Section 253 of the said Act is repealed.

206. The heading preceding section 662 and sections 662 to 667 of the said Act are repealed and the following substituted therefor:

### *Restitution*

665. (1) Where an offender is convicted of an offence, the court may make an order that an offender shall, on such terms as the court may fix, make restitution to another person in one or any combination of the following ways that is applicable and appropriate in the circumstances, namely,

(a) subject to subsection (3), in the case of property obtained by the offender as a result of the commission of the offence, by returning the property to that person or to someone designated by that person if that person is the lawful owner or lawfully entitled to possession of the property;

(b) in the case of damage to, or the loss or destruction of, the property of any person arising from the commission of an offence or the arrest or attempted arrest of the offender, by paying to that person an amount not exceeding the replacement value of the property on the date the order is imposed less the value of any part of the property that is returned to that person as of the date it is returned, where such amount is readily ascertainable;

(c) in the case of bodily injury to any person arising from the commission of an offence or the arrest or attempted arrest of the offender, by paying an amount equal to all special damages and loss of income or support incurred as a result of the bodily injury, where the value thereof is readily ascertainable;

(d) by paying an amount of punitive damages

(i) where the offender is an individual, not exceeding two thousand dollars in respect of a summary conviction offence and not exceeding ten thousand dollars in respect of an indictable offence, and

(ii) where the offender is a corporation, not exceeding twenty-five thousand dollars in respect of a summary conviction offence and in an amount in the discretion of the court in respect of an indictable offence; and

(e) subject to subsection (2), where the person to whom restitution is to be made and the offender agree on restitution, by making restitution in the manner provided for in the agreement.

(2) The agreement referred to in paragraph (1)(e)

(a) may provide that the offender shall make restitution in any manner, for example, by

(i) returning property obtained as a result of the commission of the offence or other property in lieu thereof or paying a sum of money to that person, or

(ii) performing the unpaid work specified in the agreement as restitution to that person for any loss, damage or injury suffered by that person in respect of which restitution under paragraph (1)(b) or (c) may be ordered to be made;

(b) shall not provide that the offender shall pay an amount for punitive damages; and

(c) shall be in writing and filed with the court, where the court so directs.

**209.** The said Act is further amended by adding thereto, immediately after the renumbered section 668.29, the following heading and sections:

### *Dangerous Offenders*

**668.3** In Section 668.31, “serious personal injury offence” means an indictable offence, other than high treason, treason, first degree murder or second degree murder, involving

(a) the use or attempted use of violence against another person, or

(b) conduct endangering or likely to endanger the life or safety of another person

and for which the offender may be sentenced to imprisonment for ten years or more.

**668.31** (1) Where, on an application made following the conviction of an offender, it is established to the satisfaction of the court, at the time of the sentencing hearing held pursuant to subsection 646(1), that the offence for which the offender has been convicted is a serious personal injury offence and

(a) is of such a brutal nature as to compel the conclusion that the offender constitutes a threat to the life, safety or physical well-being of other persons, or

(b) forms a part of a pattern of repetitive behaviour by the offender showing a failure to restrain his behaviour and a wanton and reckless disregard for the lives, safety or physical well-being of others,

the court shall impose a sentence of imprisonment for life in lieu of any other sentence that might be imposed for the offence for which the offender has been convicted.

(2) No application shall be heard under this section unless

(a) the Attorney General of the province in which the offender was tried gives, before or after the making of the application, his personal consent in writing to the application;

(b) notice was given by the prosecutor to the offender or his counsel, before the offender pleaded to the offence, that an application would be made under this section on conviction;

(c) at least seven days notice is given to the offender by the prosecutor, after the making of the application, outlining the basis on which it is intended to found the application; and

(d) copies of the notices referred to in paragraphs (b) and (c) are filed with the clerk of the court.”

**210.** (1) Section 669 of the said Act is amended by adding thereto, immediately after paragraph (a) thereof, the following paragraph:

“(a.1) where the provisions of section 592 have been complied with, in respect of a person who has been convicted of second degree murder where he has previously been convicted of culpable homicide that is murder, however described under this Act, that he be sentenced to imprisonment for life without eligibility for parole until he has served twenty-five years of his sentence;”

(2) Section 669 of the said Act is further amended by striking out the word “and” at the end of paragraph (b) thereof and by adding thereto the following paragraph:

“(b.1) in respect of a person who has been sentenced to imprisonment for life under section 668.31, that he be sentenced to imprisonment for life without eligibility for parole until he has served ten years of his sentence; and”

**214.** Part XXI of the said Act is repealed.

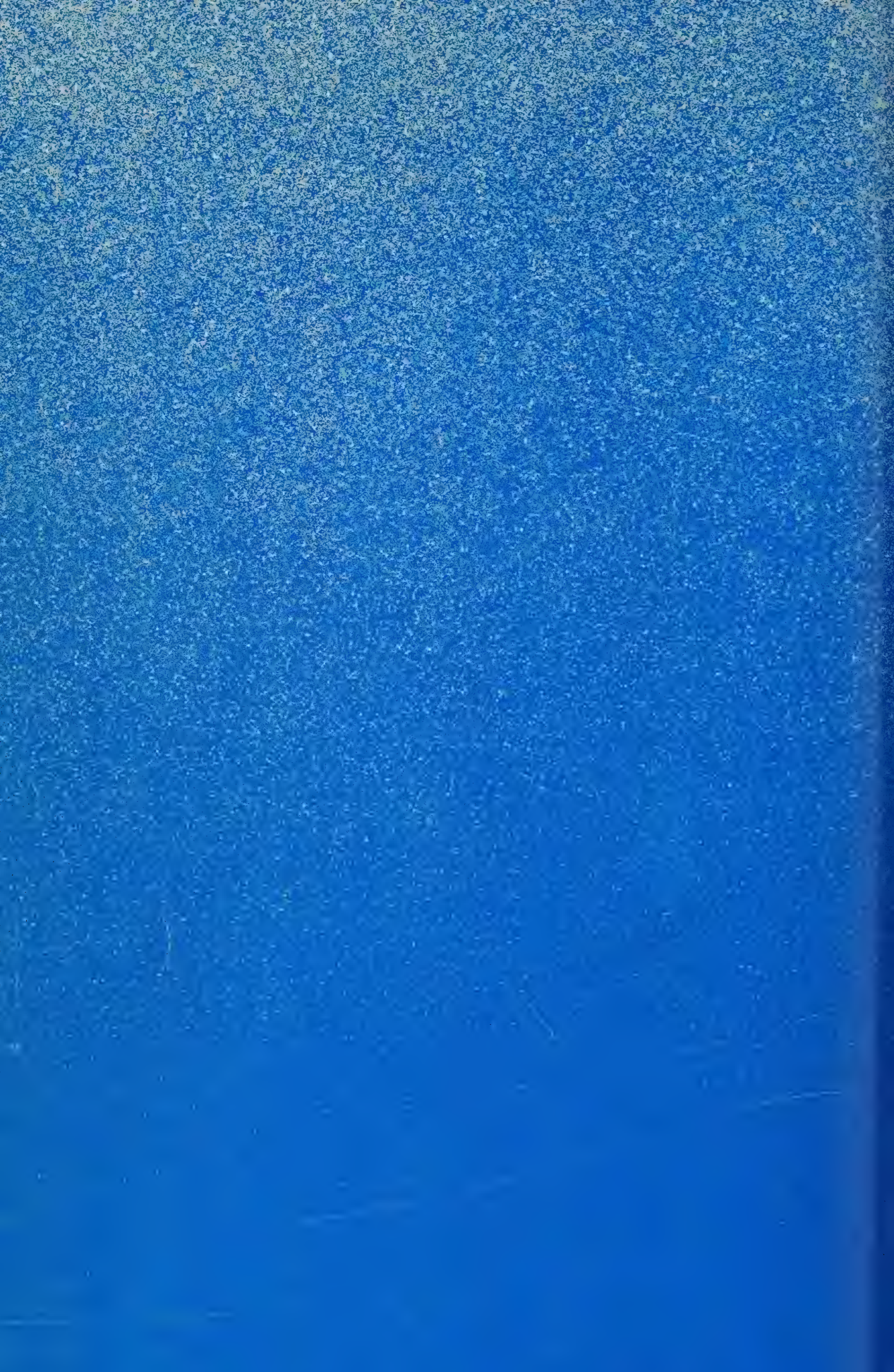












Chapman, H. A. 1880

Chapman, H. A. 1880. The life of the late John Chapman, A.M., D.D., of the University of Cambridge, and of the late John Chapman, A.M., D.D., of the University of Cambridge. London: Chapman and Hall.













